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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 30 मार्च, 2001

का. आ. 747.—संविधान के अनुच्छेद 148 की धारा (5) के साथ पठित अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारतीय लेखा परीक्षा और लेखा विभाग में सेवारत व्यक्तियों के संबंध में भारत नियंत्रक तथा महालेखा परीक्षा से परामर्श के पश्चात्, राष्ट्रपति एतद्द्वारा, अनुपूरक नियमों में और आगे संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, अर्थात् :—

1. (1) ये नियम अनुपूरक (संशोधन) नियम 2001 हैं ।

(2) ये नियम सरकारी राजपत्र में प्रकाशन की तारीख से लागू होंगे ।

2. अनुपूरक नियम 12 के स्थान पर, निम्नलिखित प्रतिस्थापित किया जाएगा, अर्थात् :—

"अनुपूरक नियम 12 — जब तक कि राष्ट्रपति विशेष आदेश से अन्यथा निर्देश नहीं देते हैं, वित्तीय वर्ष में किसी सरकारी कर्मचारी को 1500 रुपए से अधिक भुगतान किए गए किसी शुल्क का एक तिहाई भाग भारत की संचित निधि में जमा करा दिया जाएगा ।"

टिप्पणी : प्रधान नियम दूसरी बार संशोधित किया जा रहा है ।

[सं. 16013/1/93—स्थापना (भने)]

डी. आर. चट्टोपाध्याय, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS

(Department of Personnel & Training)

New Delhi, the 30th March, 2001

S.O. 747.—In exercise of the powers conferred by the proviso to article 309 read with clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General of India, in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules, further to amend the Supplementary Rules namely :—

1. (1) These rules may be called the Supplementary (Amendment) Rules, 2001.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. For Supplementary Rule 12 the following shall be substituted, namely :—

"SR 12. Unless the President by special order otherwise directs, one third of any fees in excess of Rs. 1500 paid to a Government servant in a financial year shall be credited to the Consolidated Fund of India".

Note : The principal rule is being amended for the second time.

[No. 16013/1/93 Estt. (Allowances)]

D. R. CHATTOPADHYAY, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

केन्द्रीय उत्पाद शुल्क आयुक्त का कार्यालय

मदुरै, 27 मार्च, 2001

[सं. 1/2001—सीमा शुल्क (एन. टी.)]

का. आ. 748.—सीमा शुल्क अधिनियम 1962 धारा 9 जो भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली के अधिसूचना सं. 33/94—सीमा शुल्क (एन. टी.) दिनांक 1-7-94 के साथ पठित, द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैं एतद्द्वारा तमिलनाडु राज्य के तेनी जिला, पेरियकुलम तालुका के "जयमंगलम गांव" को सीमा शुल्क अधिनियम 1962 (1962 का 52) के अधीन माल प्रक्रिया निर्यातोन्मुख उद्यम स्थापित करने हेतु भांडागार घोषित करता हूं ।

[फा.सं. सी. ए. IV/16/1/2001—टी. 2]

एन. शशिधरन, आयुक्त

MINISTRY OF FINANCE

(Department of Revenue)

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE

Madurai, the 27th March, 2001

[No. 01/2001 CUSTOMS (N.T.)]

S.O. 748.—In exercise of the powers conferred on me under Section 9 of the Customs Act, 1962 (52 of 1962) read with Notification No. 33/94-Customs (NT) dated 1-7-1994 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I hereby declare "Jeyamangalam Village, Periyakulam Taluk, Theni District" in the State of Tamilnadu to be warehousing station under the Customs Act, 1962 (52 of 1962) for the purpose of setting up of 100 per cent Export Oriented Undertakings.

[File C. No. IV/16/04/2001-T. 2]

N. SASIDHARAN, Commissioner

आर्थिक कार्य विभाग

बैंकिंग (प्रभाग)

नई दिल्ली, 27 मार्च, 2001

का.आ.749.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध स्कीम, 1970 के खंड 3 के उपखंड (1) के साथ पठित बैंककारी कंपनी, उपक्रमों का अर्जन एवं अंतरण अधिनियम, 1970 की धारा 9 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा निम्नलिखित व्यक्तियों को 27 मार्च, 2001 से तीन वर्ष की अवधि के लिए युनाइटेड बैंक ऑफ इंडिया के निदेशक के रूप में नामित करती है :—

1.	श्री विकास चन्द्र श्री कृष्ण चिन्ने प्रोफेसर एवं निदेशक, गोखले इंस्टीट्यूट आफ पॉलिटिक्स एंड इकनोमिक्स, पुणे ।	बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम 1970 की धारा 9 की उप-धारा (3क) के साथ पठित उप-धारा (3) के खंड (ज) के अनुसरण में ।
2.	श्री हृषीकेश भट्टाचार्य, प्रोफेसर, आई आई एम 49 ई पाम एवेन्यू, कोलकाता-700019	—वही—
3.	श्री राम के. गुप्ता सेवानिवृत्त उप प्रबंध निदेशक भारतीय स्टेट बैंक, ई-25, गीतांजलि एन्कलेव, नई दिल्ली-110017	—वही—
4.	श्री सुप्रतिम सेन, व्यवसायी, एम-5, करूणामोयी, साल्ट लेक सिटी, कोलकाता-700091	—वही—
5.	श्री मुकुल राय, समाजसेवक, 53, घटक रोड, डाकखाना-कंचरापारा, जिला-नार्थ 24 परगना-743145	—वही—

6. श्री दिलीप फुकन, अध्यक्ष, ऑल असम एस एम आई सिएशन, डिगोन्टो जू-नारंगी रोड, गुवाहटी-781021	बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधि-नियम, 1970 की धारा 9 की उपधारा (3क) के साथ पठित उपधारा (3) के खंड (ज) के अनुसरण में ।	

[फाइल सं. 9/17/2000-बी.ओ.-I (i)]
रमेश चन्द, अवर सचिव

(Department of Economic Affairs)
(Banking Division)
New Delhi, the 27th March, 2001

S.O. 749.—In exercise of the powers conferred by sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with sub-clause (1) of Clause 3 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970, the Central Government hereby nominates the following persons as Directors of United Bank of India for a period of three years commencing on 27th March, 2001.

1.	Shri Vikaschandra Shrikrishna Chitre, Prof. and Director, Gokhale Institute of Politics and Economics, Pune.	In pursuance of Clause (h) of sub-section (3) read with Sub-section (3A) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.
2.	Shri Ram K. Gupta, Retd. DMD, State Bank of India, E-25, Gitanjli Enclace, New Delhi-110017.	-do-
3.	Shri Hrishikes Bhattacharya, Prof., IIM, 49E Palm Avenue, Kolkata-700019.	-do-
4.	Shri Supratim Sen, Businessman, M-5, Karunamoyee, Salt Lake City, Kolkata-700091.	-do-
5.	Shri Mukul Roy, Social Worker, 53, Ghatak Road, PO-Kanchra Para, Distt. North 24 Parganas-743145.	-do-
6.	Shri Dilip Phukan, President, All Assam SSI Association, DIGONTO, Zoo-Narengi Road, Guwahati-781021.	-do-

[F. No. 9/17/2000-B.O. I(i)]
RAMESH CHAND, Under Secy.

नई दिल्ली, 27 मार्च, 2001

का.आ. 750.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970 के खंड 3 के उपखंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्-[illegible] 27 मार्च, 2001 से तीन वर्ष की अवधि के लिए यूको बैंक में निदेशक के रूप में नामित करती है :—

1. श्री ए. शक्तिवेल, व्यवसायी, पौपीज निटवीयर, 33, एम.पी. नगर, तिरूपुर-641607	बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंत-रण) अधिनियम 1970 की धारा 9 की उप-धारा (3क) के साथ पठित उप-धारा (3) के खंड (ज) के अनुसरण में ।	
2. श्री भाल चन्द्र महादेव भिडे, सेवानिवृत्त उप-प्रबंध निदेशक, भारतीय स्टेट बैंक, ए-3, वागेश्री, शंकर घाणेकर मार्ग, प्रभादेवी, मुम्बई ।	—वही—	
3. श्री महेश कुमार भागचन्डका व्यवसायी, 23-बी, ओल्ड बाली गंज, सर्कुलर रोड, कोलकाता ।	—वही—	
4. श्री सनत कुमार दत्ता, सनदी लेखाकार (सीए) 1-ए राजा सुबोध मलिक स्क्वेअर, 6ठी मंजिल, कोलकाता-700013	—वही—	
5. डा. राम अवतार यादव, प्रोफेसर वित्त, दिल्ली विश्वविद्यालय, डी-176-अशोक विहार, फेज-1, नई दिल्ली-110052	—वही—	
6. प्रो. मौसमी घोष, प्रोफेसर वित्त आई आई एम, 115 एम, रासबिहारी एवेन्यू, तीसरी मंजिल, चन्द्राणी ज्यूलर्भ बिल्डिंग, कोलकाता-700019	—वही—	

[फाइल सं. 9/17/2000-बी.ओ. I(ii)]
रमेश चन्द, अवर सचिव

New Delhi, the 27th March, 2001

S.O. 750.—In exercise of the powers conferred by sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with sub-clause (1) of Clause 3 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970, the Central Government hereby nominates the following persons as Directors

of UCO Bank for a period of three years commencing on 27th March, 2001.

1.	Shri A. Sakthivel, Businessman, Poppy's Knitwear, 33, M.P. Nagar, Tirupur-641607.	In pursuance of Clause (b) of sub-section (3) read with Sub-section (3A) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.
2.	Shri Bhalachandra Mahadev Bhide, Retd. Deputy Managing Director State Bank of India, A-3, Bageshree, Shankar Ghanekar Marg, Pravhadevi, Mumbai.	-do-
3.	Shri Mahesh Kumar Bhagchandka, Businessman, 23-B, Old Bali Ganj, Circular Road, Kolkata.	-do-
4.	Shri Sanat Kumar Dutta, CA, 1-A, Raja Subodh Mullick Square, 6th Floor, Kolkata-700013.	-do-
5.	Dr. Ram Avtar Yadav, Prof. of Finance, University of Delhi, D-176, Ashok Vihar, Phase-I, Delhi-110052.	-do-
6.	Prof. Mousumi Ghosh, Prof. of Finance, IIM, 115M, Rashbehari Avenue, 3rd Floor, Chandrani Jewellers Buildings, Kolkata-700019.	-do-

[F. No. 9/17/2000-B.O. I(iii)]
RAMESH CHAND, Under Secy.

नई दिल्ली, 27 मार्च, 2001

का.आ. 751:—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम 1970 के खंड 3 के उपखंड (1) के साथ पठित बैककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा निम्नलिखित व्यक्तियों को 27 मार्च, 2001 से तीन वर्ष की अवधि के लिए इंडियन बैंक में निदेशक के रूप में नामित करती है :—

1.	श्री चिन्नामानूर राजमणि मुथुकृष्णन, प्रोफेसर, आई आई टी मद्रास-600036	बैककारी कंपनी (उपक्रमों का. अर्जन एवं अन्तरण) अधिनियम 1970 की धारा 9 की उप-धारा (3क) के साथ पठित उप-धारा (3) के खंड (ज) के अनुसरण में।
2.	श्री मोसूर पट्टाभिराम राधाकृष्णन, सेवानिवृत्त उप-प्रबंध निर्देशक, भारतीय स्टेट बैंक ईस्ट कांस्ट रोड, नीलनकरई, चेन्नई-41	—वही—
3.	श्री पैरंमैपल्ली वासुदेव मैया, भूतपूर्व अध्यक्ष, आई सी आई सी आई बैंक लि., फ्लैट नं. 702, बिल्डिंग 14, हिमगिरि सिद्दनाचल पोखरन रोड नं. 2 थाणे (पश्चिम)	—वही—
4.	श्री पी. वी. इन्द्रसेन, भूतपूर्व प्रोफेसर, आई आई टी, मद्रास बी-57, हिल व्यू अपार्टमेंट्स, वसन्त विहार, नई दिल्ली-57	—वही—
5.	श्री महेश दत्त शर्मा, सेवानिवृत्त आई पी एस, एन-32, सैनिक फार्म, साउथ एवेन्यू नई दिल्ली-62	—वही—
6.	शिवाजी राव नानासाहेब सतपुटे, एडवोकेट, सतपुटे एंड कंपनी, 235, पी.डी. मेल्लो रोड, जी पी ओ फोर्ट के पास, मुम्बई-400001	—वही—

[फाइल सं. 9/17/2000—बी.ओ. I(iii)]
रमेश चन्द, अवर सचिव

New Delhi, the 27th March, 2001

S.O. 751.—In exercise of the powers conferred by sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with sub-clause (i) of Clause 3 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970, the Central Government hereby nominates the following persons as Directors of Indian Bank for a period of three years commencing on 27th March, 2001.

1.	Shri Chinnamanur Rajamani Muthukrishnan, Prof. IIT, Madras-600036.	In pursuance of Clause (b) of sub-section (3) read with Sub-section (3A) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.
2.	Shri Mosur Pattabhirama Radhakrishnan, Retd. DMD, State Bank of India, East Coast Road, Neelankarai, Chennai-41.	-do-
3.	Shri Parampally Vasudeva Maiya, Ex-Chairman, ICICI Bank Ltd., Flat No. 702, Building 14, Himgiri Siddanachal, Pokharan Road No. 2, Thane (West).	-do-

4.	Shri P. V. Indiresan, Former Professor, IIT, Madras, B-57, Hill View Apartments, Vasant Vihar, New Delhi-57.	In prusuance ofClause (h) of sub-section (2) read with Sub-section (3A) of Section 9 of the Banking Companies (Acquisition and Transfer of Udertakings) Act, 1970.	N-32, Sainik Farm, South Avenue, New Delhi-62.
6.	Shri Shivajirao Nanasaheb Satpute, Advocate, Satpute & Company, 235, P.D. Mello Road, Near GPO, Fort, Mumbai-400001.	do-	
5.	Shri Mahesh Dutt Sharma, Retd. IPS,	-do-	

[F. No 9/17/2000-B.O. I(iii)]
RAMESH CHAND, Under Secy.

पैट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 29 मार्च, 2001

का. आ. 752:—केन्द्रीय सरकार ने पैट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पैट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का. आ. 920 (अ) तारीख 06 अक्तूबर, 2000 द्वारा, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में, हरियाणा राज्य में काण्डला-जामनगर-लोनी पाइपलाइन परियोजना के माध्यम से द्रव पैट्रोलियम गैस के परिवहन के लिए गैस-अथॉरिटी आफ इंडिया लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा कर दी थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को 15 अक्तूबर, 2000 को उपलब्ध करा दी गई थीं;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को रिपोर्ट प्रस्तुत कर दी है;

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात्, इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि में पाइपलाइन बिछाने के लिए उपयोग का अधिकार अर्जित करने की घोषणा करती है;

और केन्द्रीय सरकार, उस धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निदेश देती है कि उक्त भूमि में उपयोग का अधिकार सभी विल्लगमों से केन्द्रीय सरकार में निहित होने की बजाय इस घोषणा के प्रकाशन की तारीख से गैस अथॉरिटी ऑफ इंडिया लिमिटेड में निहित होगा।

अनुसूची

जिला	तहसील	ग्राम	खसरा संख्या	उ. का. अ. के लिए अर्जित की जाने वाली भूमि (हैक्टेयर में)
1	2	3	4	5
फरीदाबाद	बल्लभगढ़	सीही	129/23	0.0600
			22/1	0.0800
			21	0.0440
			113/6/1	0.0025
			5/1	0.0200
			112/21	0.0125
			20/2/1	0.0250
			11/1	0.0250
			10/1	0.0225
			1	0.0050

1	2	3	4	5
फरीदाबा	बल्लभगढ़	सीट्टी	104/25/1	0.0250
			16/2/1	0.0125
			16/1/1	0.0125
			15/1	0.0250
			6/1	0.0250
			5/2/1	0.0225
			5/1/1	0.0025
			94/25/1	0.0250
			16/1	0.0250
			15/1	0.0250
			6/1	0.0250
			5/1	0.0250
			87/25/2/2	0.0050
			25/1/1	0.0200
			16/1/1	0.0125
			16/1/2	0 0125
			15/1	0.0250
			6/2	0.0250
			5/1	0.0200
			4/2	0.0050
			75/25/2/2	0.0125
			142/9	0.0084
			10	0.0109
			कुल	0.7033
		मुअेडी	18/9	0.0293
			8/1	0.0402
			7	0.0402
			6/1	0.0402
			17/10	0.0402
			9	0.0402
			8	0.0369
		मुअेडी क्रमश		0.0369
			कुल	0.3041

[सं. एल.-14014/6/2000—जी पी.]

श्री. एस. एन. प्रसाद, निदेशक (प्र. गैस)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 29th March, 2001

S.O.752—whereas by a notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 920 (E) dated the 6th October 2000, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act) the Central Government declared its intention to acquire the right of user in the land, specified in the Sehedule appended to that notification for the purpose of laying pipeline for transport of liquid gas through Kandla Jamnagar Loni pipeline Project in the State of Haryana by the Gas Authority of India Limited.

And whereas, copies of the said Gazette notification were made available to the public on 15th day of October 2000;

And whereas, the Competent Authority has under sub-section (1) of section 6 of the said Act submitted report to the Central Government:

And further wheras, the Central Government has, after considering the said report, and decided to acquire the right of user in the lands specified in the Schedule appended to this notification:

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the Schedule appended to this notification is hereby acquired for laying the pipelines

And, further, in exercise of the powers conferred by sub-section (4) of that section, the Central Government directs that the right of user in the land shall instead of vesting in the Central Government vest on this date of the publication of this declaration in the Gas Authority of India Limited, free from all encumbrances.

SCHEDULE

Distt.	Tehsil	Village	Survey No.	Land to be be acquired for R.O.U. in hectares
Faridabad	Ballabhgarh	Sihi	129/23	0·0600
			22/1	0.0800
			21	0.0440
			113/6/1	0.0025
			5/1	0.0200
			112/21	0.0125
			20/2/1	0.0250
			11/1	0.0250
			10/1	0.0225
			1	0.0050
			104/25/1	0.0250
			16/2/1	0.0125
			16/1/1	0.0125
			15/1	0.0250
			6/1	0.0250
			5/2/1	0.0225
			5/1/1	0.0025
			94/25/1	0.0250
			16/1	0.00250
			15/1	0.0250
			6/1	0.0250
			5/1	0.0250
			87/25/2/2	0.050
			25/1/1	0.0200
			16/1/1	0.0125
			16/1/2	0.0125
			15/1	0.0250
			6/2	0.0250
			5/1	0.0200
			4/2	0.0050
			75/25/2/2	0.0125
			142/9	0.0084
			10	0.0109
			TOTAL	0.7033

1	2	3	4	5
		Mujheri	18/9	0.0293
			8/1	0.0402
			7	0.0402
			6/1	0.0402
			17/10	0.0402
			9	0.0402
			8	0.0369
			Cart track	0.0369
		Total		0.3041

[No. L-14014/6/2000- G.P.]
I.S.N. PRASAD, Director (NG)

नई दिल्ली, 4 अप्रैल, 2001

का० आ. 753.—केन्द्रीय सरकार को ऐसा प्रतीत होता है कि लोकहित में यह आवश्यक है कि तमिलनाडु राज्य में कुथालम—1 से मयलूर तक टी. एन. ई. बी. गैस पाइपलाइन परियोजना तक प्राकृतिक गैस के परिवहन के लिए, गैस अथॉरिटी ऑफ इंडिया लिमिटेड द्वारा पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को यह प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक है कि उस भूमि में जिस में उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है उपयोग के अधिकार का अर्जन करना आवश्यक है और जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है ;

अतः, अब, केन्द्रीय सरकार, पैट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उसमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति, राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दिये जाने की तारीख से 21 (इक्कीस) दिनों के भीतर, उसमें उपयोग के अधिकार के अर्जन या भूमि में पाइपलाइन बिछाने के संबंध में आक्षेप लिखित रूप में सक्षम प्राधिकारी, गैस अथॉरिटी ऑफ इंडिया लिमिटेड, कावेरी बेसिन, नागापट्टीनम, तमिलनाडु को कर सकेगा।

अनुसूची

जिला	तहसील	गांव	सर्वे सं.	क्षेत्रफल (हेक्टेयर में)
नागापट्टीनम	मईलादुतुरै	51, कुथालम	490	0.09.0
			493	0.17.0
			492	0.02.0
			500	0.01.0
			648/1	0.05.0
			648/2ए	0.03.0
			647/1बी	0.00.5
			647/2	0.06.0
			77/1	0.11.0
			548	0.05.0
			कुल	0.59.5

जिला	तहसील	गाँव	सर्वे सं.	क्षेत्रफल (हेक्टेयर में)
नागापट्टीनम	मईलादुतुरै	51/2, उमाम्बालापुरम्	487/7	0.06.0
			487/9	0.06.0
			478/1ए	0.09.0
			478/1बी	0.01.5
			478/2	0.05.5
			480/3	0.18.0
			649/1ए	0.07.0
			649/1बी	0.05.0
			652/1	0.03.0
			652/3	0.06.0
			652/4	0.11.0
			662	0.01.0
			659/3	0.05.5
			654	0.00.5
			660/1	0.26.5
			660/2	0.10.0
			669/1	0.02.5
			669/2	0.15.0
			669/3	0.02.0
			कुल	1.41.0
नागापट्टीनम	मईलादुतुरै	52, क्षेत्रपालापुरम	114/2	0.02.0
			113/1बी	0.00.5
			113/1सी	0.05.5
			117	0.00.5
			128	0.03.0
			127	0.18.5
			125	0.11.0
			126	0.05.0
			129/3	0.01.5
			190/4	0.01.0
			190/5	0.02.5
			190/8	0.01.0
			191	0.03.5
			194/1ए	0.07.5
			193	0.02.0
			192/2	0.00.5
			192/4	0.02.5
			195	0.00.5
			115/1	0.00.5
			115/2	0.06.0
			115/3	0.06.0
			115/4बी	0.04.0
			116	0.03.0
			कुल	0.88.0

जिला	तहसील	गांव	सर्वे स.	क्षेत्रफल (हेक्टेयर मे)
नागापट्टीनम	मईलाडुतुरै	71, वैरमनल्लूर	50/1	0.16.5
			50/7	0.04.5
			50/8	0.04.5
			50/10	0.03.5
			71/14	0.03.0
			72/1	0.05.0
			72./2	0.00.5
			78/1	0.07.0
			78/2 बी	0.05.5
			78/4	0.04.5
			170/1	0.14.0
			172/2	0.06.0
			172/4	0.03.0
			174/1	0.09.5
			183/1	0.10.5
			183/2	0.00.5
			188/1	0 07.5
			188/2	0.01.5
			188/6	0.04.5
			187/1	0.01.5
			186/3	0.01.5
			71/5	0.00.5
			71/15	0.01.0
			कुल	1.16.0
नागापट्टीनम	मईलाडुतुरै	70 मैलारियूर	22/2 ए	0.04.5
			22/2 बी	0.11.0
			23/1	0 06.0
			23/8 ए	0.04.0
			24	0.01.0
			41	0.01.5
			43	0.07.0
			44	0.07.0
			45/1	0.12.0
			45/3	0.00.5
			46/1	0.14.5
			61/4 ए	0.02.0
			61/6	0.02.0
			61/1	0.02.5
			89/4	0.08.5
			89/5	0.01.0
			89/8 ए	0.06.5
			89/8 बी	0.02.0
			89/8 एफ	0.05.0

जिला	तहसील	गाँव	सर्वे स.	क्षेत्रफल (हेक्टेयर में)
नागापट्टीनम	माईलादुतुरै	70 मैलाईयूर कमश.	89/8 जी	0.03 0
			90	0.02.5
			111/4	0.07.0
			111/5	0.04.0
			111/8	0.07.0
			110/1 ए	0.02.5
			110/1 बी	0.01 0
			109/1 ए	0 00 5
			109/4	0.05.0
			109/13	0.01.0
			109 17 ए	0.01.5
			109/20	0.06.0
			109/21	0.03.5
			109/22	0 02.0
			109/25	0.00.5
			109/27	0.02.0
			109/30	0.05.0
			109/31	0 02.0
			108/2	0.00.5
			108/17	0.02 5
			108/49	0 01.5
			107/2	0.01.0
			107/3	0.00.5
			107/9	0.00.5
			107/12	0.03.0
			107/11	0 00.5
			107/19	0 00.5
			107/17	0.00.5
			107/22	0.01.0
			107/18	0.00.5
			107/27	0.03.0
			107/28	0 00.5
			107/31	0.05.5
			107/42	0 01.0
			107/41	0.02.0
			106/1	0.10.0
			105/1 ए	0.07.0
			105/2	0.01.0
			119/2 ए	0 02 0
			119/2 बी	0.01.5
			कुल	2.03.5

जिला	तहसील	गाव	सर्वे सं.	क्षेत्रफल हेक्टेयर मे
नागापट्टीनम	मईलाडुतुरै	81 पेरुमलकाईल	90	0.02.0 जी. पी.
			89/1	0.01.5
			89/2	0.15.0
			82/2	0.03.5
			80	0.17.0
			91	0.05.0 जी. पी.
			135	0.02.0
			136/3 ए	0.04.0
			136/3 बी	0.00.5 जी. पी.
			138	0.09.0
			141	0.01.5 जी. पी.
			142/1	0.23.0
			144/1	0.17.0
			85/2	0.08.5
			कुल	1.26.5
		80, मन्थुर	16	0.12.0
			20	0.02.0 जी. पी.
			कुल	0.13.0

[फाइल सं. एल.-14014/6/01-जी. पी.]
आई. एस. एन. प्रसाद, निदेशक (प्रा. गस)

New Delhi, 4th April, 2001

S.O. 753.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of natural gas from Kuthalam—I to Maruthur TNEB Gas Pipline Project in Tamil Nadu State, a pipeline should be laid by the Gas Authority of India Limited,

And whereas, it appears to the Central Government that for the purpose of laying of the said Pipeline it is necessary to acquire the right of user in the land under which the said Pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therin;

Any person, interested in the land described in the said Schedule may, within twenty one days from the date on which the copies of this notification as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipline under the land to the Competent Authority, Gas Authority of India Limited, Cauvery Basin, Nagapattinam, Tamil Nadu.

SCHEDULE

District	Taluk	Village No. & Name	Survey No.	Area to be Acquired for In Hect.
1	2	3	4	5
Nagapattinam	Mayiladuthurai	51, Kuthalam	490	0.09.0
			493	0.17.0
			492	0.02.0 GP.

1	2	3	4	5
Nagapattinam	Mayiladuthurai	51 Kufthala n	500	0.01.0
			648/1	0.05.0
			648/2A	0.03 0
			647/1B	0.00.5
			647/2	0.06.0
			77/1	0.11.0
			548	0.05.0 G.P.
			Total	0.59.5
Nagapattinam	Mayiladuthurai	51/2, Umambalpuram	487/7	0.06.0
			487/9	0.06.0
			478/1A	0.09.0
			478/1B	0.01.5
			478/2	0.05.5
			480/3	0.18.0
			649/1A	0.07.0
			649 1B	0.05.0
			652/2	0.03.0
			652/3	0.06.0
			652/4	0.11.0
			662/	0.01.0 G.P.
			659/3	0.05.5
			654	0.00.5 G.P.
			660/1	0.26.5
			660/2	0.10.0
			669/1	0.02.5
			669/2	0.15.0
			669/3	0.02.0
			Total	1.41.0
Nagapattinam	Mayiladuthurai	52, Kshethrapalapuram	114/2	0.02.0 G.P.
			113/1B	0.00·5
			113/1C	0.05.5
			117	0.00.5 G.P.
			128	0.03.0 G.P.
			127	0.18.5 G.P.
			125	0.11.0
			126	0.05.0
			129/3	0.01.5
			190/4	0.01.0 G.P.
			190/5	0.02.5 G.P
			190/8	0.01.0 G.P.
			191	0.03.5
			194/1A	0.07.5
			193	0.02.0 G.P.
			192/2	0.00.5
			192/4	0.02.5
			195	0.00.5 G.P.
			115/1	0.00.5
			115/2	0.06.0
			115/3	0.06.0
			115/4B	0.04 0
			116	0.03.0 G.P.
			Total	0.88.0

1	2	3	4	5
Nagapattinam	Mayiladuthurai	71, Senniyanallur	50/1	0.16.5
			50/7	0.04.5
			50/8	0.04.5
			50/10	0.03.5
			71/14	0.03.0
			72/1	0.05.0
			72/2	0.00.5 G.P.
			78/1	0.07.0
			78/2B	0.05.5
			78/4	0.04.5
			170/1	0.14.0
			172/2	0.06.0
			172/4	0.03.0
			174/1	0.09.5
			183/1	0.10.5
			183/2	0.00.5
			188/1	0.07.5
			188/2	0.01.5
			188/6	0.04.5
			187/1	0.01.5
			186/3	0.01.5 G.P.
			71/5	0.00.5
			71/15	0 01.0
			Total	1.161.0
Nagapattinam	Mayiladuthurai	70, Melaiyur	22/2A	0.04.5
			22/2C	0.14.0
			23/1	0.06.0
			23/8A	0.04.0
			24	0.01.0 G.P
			41	0.01.5 G.P
			43	0.07.0
			44	0.07.0
			45/1	0.12.0
			45/3	0.00.5
			46/1	0.14.5
			61/4A	0.02.0
			61/6	0.02.0
			61/1	0.02.5
			89/4	0.08.5
			89/5	0.01.0
			89/8A	0.06.5
			89/8D	0.02.0
			89/8F	0.05.0
			89/8G	0.03.0
			90	0.02.5 G.P
			111/4	0.07.0
			111/5	0.04.0
			111/8	0.07.0
			110/1A	0.02.5
			110/1B	0.01.0 G.P
			109/1A	0.00.5 G.P
			109/4	0.05.0
			109/13	0.01.0 G.P

1	2	3	4	5
Nagapattinam	Mayiladuthurai	70. Melaiyur	109/17A	0.01.5
			109/20	0.06.0
			109/21	0.03 5
			109/22	0 02 0
			109/25	0.00.5
			109/27	0.02.0
			109/30	0.05.0
			109/31	0.02.0
			108/2	0.00.5 G.P
			108/17	0.02.5
			108/49	0.01.5
			107/2	0.01.0
			107/3	0.00.5
			107/9	0.00.5
			107/12	0.03.0
			107/11	0.00.5
			107/19	0.00.5
			107/17	0.00.5
			107/22	0.01.0
			107/18	0.00.5
			107/27	0.03.0
			107/28	0.00.5
			107/31	0.05.5
			107/42	0.01.0
			107/41	0.02.0
			106/1	0.10.0
			105/1A	0.07.0
			105/2	0.01.0 G.P
			119/2A	0.02.0
			119/2B	0.01.5
			Total	2.03.5
Nagapattinam	Mayiladuthurai	81 Perumalkoil	90	0.01.0 G.P
			89/1	0.01.5
			89/2	0.15.0
			82/2	0.03.5
			80	0.17.0
			91	0.05.0 G.P
			135	0.02.0
			136/3A	0.04.0
			136/3B	0.00.5 G.P
			138	0.09.0
			141	0.01.5 G.P
			142/1	0.23.0
			144/1	0.17.0
			85/2	0.08.5
			Total	1.26.5
		80 Maruthur	16	0.12.0
			20	0.01.0 G.P
			Total	0.13.0

[File No. L-14014/6/'01-G.P]

I. S. N. PRASAD, Director (NG)

नई दिल्ली, 10 अप्रैल, 2001

का.आ. 754 —केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का. आ. 3399, 3371 और 3372 तारीख 11 नवम्बर, 1999 और सं. का. आ 12 और 13, तारीख 01 जनवरी 2001 द्वारा उन अधिसूचनाओं से संलग्न अनुसूची में विनिर्दिष्ट भूमि में गुजरात राज्य में प्राकृतिक गैस के परिवहन के लिये, जिला सूरत में हजीरा से जिला भरुच में दहेज तक इंडियन पेट्रोकेमिकल्स कारपोरेशन लिमिटेड द्वारा पाइपलाइन बिछाये जाने के प्रयोजन के लिये उपयोग का अधिकार अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचनाओं की प्रतियां जनता को 20 जनवरी 2000 और जनवरी 2001 को उपलब्ध करा दी गई थी ;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केंद्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है ;

अतः अब, केंद्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिये उपयोग का अधिकार अर्जित किया जाता है ;

और केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह और निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केंद्रीय सरकार में निहित होने के बजाए सभी विल्लंगमों से मुक्त इंडियन पेट्रोकेमिकल्स कारपोरेशन लिमिटेड, दहेज, जिला . भरुच में निहित होगा।

अनुसूची

जिला : भरुच राज्य गुजरात

गांव का नाम (1)	तालुका (तहसील) का नाम (2)	सर्वेक्षण सं. खंड संख्या (3)	क्षेत्र हेक्टर (4)	आर (5)	सेन्टीआर (6)
अंभेटा	वागरा	656—भाग	00	07	86
		जी आइ डी सी रास्ता	04	53	74
कामरा	भरुच	51—भाग	00	18	05
भाडभूत	भरुच	नर्मदा नदी	01	51	40

[फा. सं. एल-14014/11/99-जी. पी. (भाग-V)]

आई. एम. एल. प्रसाद, निदेशक (एल. जी.)

New Delhi, the 10th April, 2001

S.O. 754.—Whereas by a notification of the Government of India, Ministry of Petroleum and Natural Gas No. S.O. 3399, 3371 and 3372 dated the 11th November, 1999 read with No. S.O. 12 and 13 dated 01-01-2001 issued under Sub-section (1) of Section-3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the lands specified in the Schedule annexed to those notifications for the purpose of laying pipelines for transport of Natural Gas in the State of Gujarat from Hajira in District Surat to Dahej in District Bharuch by the Indian Petrochemicals Corporation Limited;

And whereas copies of the said Gazette Notifications were made available to the public on 20th January, 2000 and on 20-01-2001, respectively;

And whereas, the Competent Authority has under sub-section (1) of section-6 of the said Act submitted his report to the Central Government;

And whereas, the Central Government has after considering the said report, decided to acquire the right of user in the lands specified in the Schedule appended to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section-6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the Schedule annexed to this notification is hereby acquired for laying the pipelines ;

And, further, in exercise of the power conferred by sub-section (4) of section-6 of the said Act, the Central Government hereby directs that the right of user in the said lands shall instead of vesting in the Central Government vests on this date of the publication of this declaration in the Indian Petrochemicals Corporation Limited, Dahej, Distt. Bharuch.

SCHEDULE

Distt. : Bharuch State : Gujarat Area

Name of Village	Name of Taluka	Survey/Sub Division or Block No.	Hectare	Are	Centiare
(1)	(2)	(3)	(4)	(5)	(6)
Andbhata	Vagra	656-Part	00	07	86
		GIDC Rasta	04	53	74
Kondh	Bharuch	51—Part	00	18	05
Bhadbhut	Bharuch	Narmada River	01	51	40

[F. No. L-14014/11/99-G.P. (Vol. V)]
I. S. N. PRASAD, Director (N.G.)]

श्रम मंत्रालय

नई दिल्ली, 14 मार्च, 2001

का. आ 755—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9.3.2001 को प्राप्त हुआ था ।

[स. एल-20012/(15)/91- आई आर. (सी-I)]
एन. पी. केशवन, डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 14th March, 2001

S.O. 755.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. I, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCC Ltd. and their workman, which was received by the Central Government on 9-3-2001

[No. L-20012/(15)/91-IR(C-I)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 128 of 1991

PARTIES :

Employers in relation to the management of M/s. Bharat Coking Coal Limited

AND

Their Workmen.

PRESENT :

Shri Sarju Prasad, Presiding Officer.

APPEARANCES :

For the Employers : Shri H. Nath, Advocate.

For the Workmen : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Jharkhand. INDUSTRY : Coal.

Dated, the 20th February, 2001

AWARD

By Order No. L-20012(15)/91-IR(Coal-I) dated, the 13th November, 1991 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

'Whether the action of the management of M/s. Bharat Coking Coal Ltd., in cancelling the Office Order No BCCL/PA-V/Prom/Jr. Watchers/82/3478-388 dated 19/20-1-82 vide their Office Order No. BCCL/PA-V/Prom/Jr Watcher/82 dated 7-10-82 regarding placement of Shri Aslam Shadmani and consequently terminating his service is justified ? If not, to what relief the workman is entitled ?"

2. The brief facts; giving rise to this industrial dispute is that an Office Order No. BCCL/PA-V/Prom/Jr Watchers/82/3478-388 dated 19/20-1-82 was issued under the signature of Dy. Chief Personnel Manager (NFE), a copy of the order

is Ext. W-1. This order mentions that on the recommendation of Selection Committee 13 employees including the concerned person, Aslam Shadmani, attached to Vigilance and Security Department have been found suitable for placement as Jr. Watchers in the scale of Rs. 460—10—illegible. As per this Office Order the concerned workman, Aslam Shadmani has joined in the forenoon of 21-1-82 as Jr. Watcher. The management subsequently by another Office Order No. BCCL/PA-V/Prom/Jr. Watchers/82/52502-522 dated 7-10-82 under the signature of B. N. Prasad, Addl. Chief Personnel Manager, was pleased to cancel the promotion order dated 19/20-1-82 i.e. the placement of the concerned workman, Aslam Shadmani and 2 others as Jr. Watchers. The sponsoring union i.e. Bihar Colliery Kamgar Union has raised the present dispute challenging the order of cancellation issued by the Addl. Chief Personnel Manager which is Ext. W-2 and has claimed reinstatement of the concerned workman, Md. Aslam Shadmani with full back wages.

3. The case of the concerned workman is that he was original appointed as Security Follower on 7-11-81 but he was actually rendering the services to M/s. B.C.C. Ltd. and that for all purposes the management of M/s. B.C.C. Ltd. was the employer of the concerned workman. On the recommendation of the then Chief of Security of M/s. B.C.C. Ltd. many followers were regularised in the employment of M/s. B.C.C. Ltd. The concerned workman alongwith other workmen were promoted/placed as Jr. Watchers by Office Order dated 19/20-1-82. The concerned workman had been working as Jr. Watcher continuously and has put in continuous service of 240 days attendance in each calendar year, but all of a sudden the service of the concerned workman was terminated by Office Order dated 7-10-82 under the signature of B. N. Prasad, Addl. Chief Personnel Manager on the ground of erroneous placement. The service of the concerned workman was terminated without affording any opportunity to the concerned workman and in violation of principle of natural justice and also without following mandatory provision of Section 25F of the I.D. Act. Therefore, the sponsoring union raised an industrial dispute for reinstatement with full back wages on the basis of which the case has been referred to this Tribunal.

4. The case of the management of M/s. B.C.C. Ltd., on the other hand, is that the reference by the Central Government is bad in law and on fact and the same is not maintainable. According to them, after its formation M/s. B.C.C. Ltd required services of Home Guard from the Government of Bihar temporarily till posting of C.I.S.F. under C.I.S.F. Force Act, 1968. The C.I.S.F. was posted sometime in the year 1979 and after their posting, the services of Bihar Home Guard was returned to Bihar Government. When Bihar Home Guard personnels were deputed the Commandant of Home Guard had appointed many Home Guard followers for carrying water, cooking foods and as barbers, washerman etc. who are called as Home Guard followers. When Home Guard personnels were returned back to Bihar Government some of the Home Guard followers were absorbed in C.I.S.F. under C.I.S.F. Act, 1968 and C.I.S.F. Rules, 1969, as per their requirement and rest of the C.I.S.F. followers were left out. The Government of Bihar used to pay the Home Guard followers which were reimbursed by M/s. B.C.C. Ltd. Thus there was no employer-employee relationship between C.I.S.F. force posted and M/s. B.C.C. Ltd or between Home Guard followers and M/s. B.C.C. Ltd. The establishment, office of CS/D.I.G., B.C.C.L. is not a mine under clause-L of Section 2 of the Industrial Disputes Act, 1947 read with Section 2(j) of the Mines Act, 1952. Therefore, according to the management, the concerned workman, Aslam Shadmani is not a person employed in a mine and is not a workman under Section 2(s) of the Industrial Disputes Act. He was an integral part of the Police Service/Military Service and there cannot be any industrial dispute in respect of a person who is not a workman under Industrial Disputes Act. There were altogether 59 number of followers engaged by Home Guards during the period they were deputed in M/s. B.C.C. Ltd out of whom 37 followers were regularised in the employment of C.I.S.F. while 23 persons were left and their services were terminated by C.I.S.F. In past also Home Guard followers raised an industrial dispute which was referred to this Tribunal, but was rejected by Central Government Industrial Tribunal No. 2 Dhanbad, on being transferred to Tribunal No. 2 and in that award it has been held that the Central Government was not an appropriate Government with respect to Home Guard followers, therefore the reference was rejected. Further, according to the management, regularisation of Aslam Shadmani the concerned workman and few persons were made by some interested persons with an ulterior motive and they were erroneously promoted and as soon as it came to the notice of higher authority they passed an order for cancellation by Office Order dated 7-10-82. As a matter of fact Aslam Shadmani was inducted by the then C.I.S.F. in Security Department at a daily wage of Rs. 12 per day which was not covered by any sanction of B.C.C.L. management or by following a regular procedure of recruitment as laid down by the company and for that M/s. B.C.C. Ltd. is not responsible. Such appointment amounts to entry into service through back door. He was engaged only in C.I.S.F. Corps and establishment and was never engaged by M/s. B.C.C. Ltd. in any of its units and establishment for doing the job of B.C.C.L. nor the D.I.G., C.I.S.F. was ever delegated any person to B.C.C. Ltd. He was never appointed as security follower by M/s. B.C.C. Ltd., therefore there is no question of giving him promotion to the post of Jr. Watcher. Further, according to the Management, M/s. B.C.C. Ltd. has already got surplus manpower and it is not possible for M/s. B.C.C. Ltd. to give employment to the concerned workman who wants employment by back door method. Further, according to them, his placement was cancelled by order dated 7-10-82. But the present dispute has been raised after a long delay and on that score also he is not entitled to any relief. The management has denied that the concerned workman has put in more than 240 days attendance in a calendar year. Since he was not a workman of M/s. B.C.C. Ltd., therefore, there is no question of following mandatory provision of Section 25-F of the I.D. Act.

5. Thus, from the pleadings of the parties it is apparent that the concerned workman was placed as Jr. Watcher by Order dated 19/20-1-82 and he has joined the post on 21-1-82 which was cancelled by the management by Office Order dated 7-10-82. Thus, the concerned workman has admittedly been working for 8 months and 16 days. The management has not produced any attendance register to show that during this period the concerned workman was absent from duty. Therefore, it will be presumed that the concerned workman has put attendance for more than 240 days. It is admitted by the management that the management has not followed the procedure of Section 25-F of the I.D. Act nor they have given any opportunity of showing cause before cancelling the posting of the concerned workman as Jr. Watcher. The management has disputed that the concerned workman was not appointed by M/s. B.C.C. Ltd., rather, he was appointed by D.I.G. of C.I.S.F. Therefore, he is not a workman of M/s. B.C.C. Ltd and there is no relationship of employer and employee between the concerned workman, Aslam Shadmani and M/s. B.C.C. Ltd. But the fact that the concerned workman was placed as Jr. Watcher as per Office Order of the management of B.C.C. Ltd. issued by Dy. Chief Personnel Manager (NEE) of B.C.C. Ltd. by Office Order dated 19/20-1-82 is admitted by them. They have also admitted that as per this order the concerned workman has joined in the office of D.I.G./Chief Vigilance Officer of M/s. B.C.C. Ltd. on 21-1-82 and since then he was working till the Office Order dated 7-10-82 was issued cancelling his placement on the ground of erroneous placement. Thus, it is apparent that the concerned workman had rendered service for 8 months and 16 days which becomes more than 240 days in a calendar year at the time when his services were terminated by the management by issuing a simple Office Order dated 7-10-82. When the concerned workman had worked for more than 8 months as a Jr. Watcher in the office of the Chief Vigilance Officer of M/s. B.C.C. Ltd. he becomes a workman of M/s. B.C.C. Ltd. and by no account of any argument he cannot be treated not to be a workman of M/s. BCCL. Therefore, on the pleading of M/s. B.C.C. Ltd. it is apparent that the relationship of employer and employee has been established the moment the Office Order dated 19/20-1-82 was issued and the concerned workman has joined as Jr. Watcher in the office of Chief Vigilance Officer of M/s. B.C.C. Ltd. and worked there till the Office Order dated 7-10-82 cancelling the earlier order was issued. But by that time he has certainly put in more than 240 days attendance and in such case the management's plea that without complying of Section 25-F such workmen can be terminated or his service can be dispensed without following the Section 25-F of the Act

Admittedly before cancelling the order of placement of the concerned workman as Jr. Watcher he was not given any opportunity by the management of M/s. B.C.C. Ltd. and on this score it appears that the principle of natural justice has been violated. It is settled principle of law that if any workman who has rendered more than 240 days attendance in a calendar year cannot be terminated without giving him any opportunity or explaining or without compliance of Section 25F of the I.D. Act. The management has examined one witness, Ashok Kumar Sinha, who is working as Head Clerk at Security Headquarters of BCCL. He has come to say that Home Guards were deputed to guard the properties of BCCL on deputation basis and at the time when Home Guard followers were appointed by Home Guard Unit, BCCL has nothing to do with the appointment of these Home Guards or Home Guard followers. He has admitted that when C.I.S.F. took charge some Home Guard followers were regularised in the service of C.I.S.F. He has come to say that though the concerned workman was never appointed by BCCL, but his name was considered by D.P.C. while considering the promotional matter of other workmen. He cannot say if the claim of the concerned workman was correct or not. He has admitted that many Home Guard followers have been appointed by B.C.C. Ltd. as General Mazdoor Category-I and for that purpose he has also proved certain documents which have been marked Ext. W-1 series and Ext. W-2. He has also proved certain order passed by Arun Roy, Commandant, which has been marked Ext. M-1 and M-1/1. The management has not produced any notesheet explaining the circumstance under which order cancelling the placement of the concerned workman was issued. On behalf of the workman the concerned workman has examined himself and he has stated that he was appointed as Security Follower by the Chief of Security at Jealgora colliery on 7-11-81 and was regularised in the post of Jr. Watcher on 21-1-82 and on the basis of management's letter dated 7-10-82 he was stopped from work with effect from 22-10-82. He has said that he was served with neither notice nor he was paid any compensation. He has clearly stated that he has worked for more than 240 days in a calendar year. He has claimed to be reinstated with back wages.

6. Thus, from the materials available on record, I find that the concerned workman who was working as Jr. Watcher and had worked for more than 240 days in a calendar year has been terminated by the management in the garb of an Office Order cancelling his order of placement after he has rendered more than 240 days work without giving him any opportunity to hear or show cause and also without giving him any notice, notice pay or retrenchment compensation as provided under Section 25 F of the I.D. Act. Section 25-F of the I.D. Act is very much clear that no workman employed in any industry who had been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month's notice in writing indicating the reason for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of notice and the workman has been paid at the time of retrenchment, retrenchment compensation and notice in prescribed manner is served on appropriate Government. Section 25-B defines continuous service and 240 days service in a calendar year has been treated as one year's service. Therefore it is evident that the termination of the concerned workman by way of cancelling of Office Order dated 19/20-1-82 by subsequent Office Order dated 7-10-82 is not at all justified.

7. The management has taken a plea that placement of the concerned workman was cancelled in the month of October, 1982, but the present dispute has been raised by the sponsoring union after much delay and the present dispute has been referred after lapse of about 8 years in the year 1991, therefore on this score the dispute has become stale and the concerned workman is not entitled to any relief.

8. The latest settled view of the Hon'ble Supreme Court is that on the ground of delay relief cannot be denied at best the award can be so moulded that the period of delay can be excluded for the purpose of giving relief regarding back wages and other consequential benefits. Since there is no limitation prescribed in the Industrial Disputes Act, therefore once it is held that the termination of the concerned workman is illegal relief of reinstatement cannot be refused. At best he will not be entitled for back wages because of delay in raising the industrial dispute. Furthermore, the concerned workman has admitted that since after 1987 he is practising as an Advocate and therefore it is apparent that he is gainfully employer after 1987. Although he was idle before 1987 but because there is inordinance delay in raising industrial dispute he is not entitled for any back wages either prior to 1987 or after 1987 firstly on the ground of delay and secondly on the ground of gainful employment of the concerned workman.

9. In the result I render—

AWARD

That the action of the management of M/s. B.C.C. Ltd. in cancelling the Office Order No. BCCL/PA-V/Prom/Jr. Watchers/82/3478-388 dated 19/20-1-82 vide Office Order No. BCCL/PA-V/Prom/Jr. Watcher/82/52502-522 dated 7th October, 1982 regarding placement of the concerned workman, Md. Aslam Shadmani, and subsequently terminating his service is not justified and he is entitled for reinstatement but without back wages.

SARJU PRASAD, Presiding Officer

नई दिल्ली, 14 मार्च, 2001

का.आ. 756—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं-1, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-3-2001 को प्राप्त हुआ था।

[सं. एल-20012/158/91-आई. आर. (सी-I)]
एन. पी. केसवन, डैस्क अधिकारी

New Delhi, the 14th March, 2001

S.O. 756.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. I, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCC Ltd. and their workman, which was received by the Central Government on 13-3-2001.

[No. L-20012/158/91-IR(C-I)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT DHANBAD

In the matter of a reference under section 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 18 of 1992

PARTIES :

Employers in relation to the management of Balihari Hydromining Project under Putki Balihari Area of M/s. B.C.C. Ltd.

AND

Their Workmen

PRESENT :

Shri Sarju Prasad,
Presiding Officer.

APPEARANCES :

For the Employers : Shri H. Nath, Advocate.

For the Workmen/Union : Shri S. Bose and Shri S. S. Bhattacherjee.

STATE : Jharkhand INDUSTRY : Coal

Dated, the 27th February 2001

AWARD

By Order No. L-20012(156)/91-IR (Coal-I) dated 'nil' the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

> 'Whether Shri Jhaman Ram and 12 other contractor workers are workmen of the Balihari Hydromining Project of M/s. Bharat Coking Coal Ltd. and whether the demand that these persons be regularised in the services of the said management is justified ? If so, to what relief are these persons entitled ?"

2. This dispute has been referred by the Central Government in the Ministry of Labour to decide whether Jhaman Ram and 12 other contractor workers are the workmen of the Balihari Hydromining Project of M/s. B.C.C. Ltd. and whether the demand that these persons be regularised in the services of the said management is justified ? If so, to what relief are these persons entitled ?

2. The case of the concerned persons have been sponsored by Rashtriya Colliery Mazdoor Sangh. The written statement has been filed by the Secretary of the sponsoring union in which it has been asserted that Jhaman Ram and 12 other persons named in the annexure to the order of reference have been engaged in the job of stone cutting, coal loading and unloading, heavy tyndel with special skill for installation and dismentling of sophesticated machineries during the years 1986, 1987, 1988 and 1989. They were working into underground mine under the direct supervision of Supervisory Staff of M/s. B.C.C. Ltd. and the tools and materials and implements required for performance of the job were being supplied by the company and the management also administered disciplinary action. Thus, they have produced goods and services for the benefit and interest of the company. Their attendance has been marked in Form 'C' register by the attendance clerk of the company. The further case of the sponsoring union is that although the concerned persons were not working under any contractor but the management has turned them contractor workers of the contractor, Jagdish Pandey and D. Singh, but none of them was owning any licence under the Contract Labour (Regulation and Abolition) Act, 1970. These people were not contractors but middleman or labour supplier to avoid direct payment to the workers and also to deprive them from the benefit of NCWA. These workers have been engaged in prohibited category of job and also for permanent and perennial nature of job. Therefore they are entitled for regularisation as permanent workmen at Balihari Hydromining Project under Putki-Balihari area of M/s. B.C.C. Ltd.

3. The management, on the other hand, has pleaded that the concerned persons, namely, Jhaman Ram and 12 others were engaged through contractor as per work order allotted to the contractor, but it is incorrect to say that they were engaged in the job of stone cutting, coal loading and unloading, heavy tyndel with special skill for installation and dismentling of sophesticated machineries. They were engaged in temporary and casual nature of job available from time to time under two contractors, Jagdish Pandey and D. Singh and it was the contractors who were making payment of wages to the concerned persons. The officers of M/s. B.C.C. Ltd. were simply supervising the payment as a principal employer. Further, according to the management since the establishment of the management has never engaged for more than 20 persons as contractor labourers nor the contractor was engaging more than 20 persons there is no application on Contract Labour (Regulation & Abolition) Act, 1970. The concerned persons have never worked regularly on permanent or perennial nature of job. Therefore, there is no question of regularising them as employees of M/s. B.C.C. Ltd. Therefore they are not entitled for regularisation as permanent employees of M/s. BCCL. They have further pleaded that M/s. BCCL has got surplus work force and therefore they have got no need to appoint any further workman. They have also pleaded that the reference is bad because there is no relationship of employer and employee between the management of M/s. BCCL and the concerned persons.

4. Thus, according to the pleadings of the parties and also according to the reference the first question to be decided in this reference is whether the concerned persons are workmen of M/s. B.C.C. Ltd. and then the second question to be decided is whether they are entitled for regularisation as employees of M/s. BCCL, if so, to what relief they are entitled ?

5. FINDINGS :

Point Nos. (i) & (ii) :—

The sponsoring union in order to prove that the concerned persons are the workmen of M/s BCCL have examined four witnesses, besides that they have filed several other documents also. WW-1, Jagdish Pandey is the contractor under whom the concerned persons, Jhaman Ram and 12 others are said to be working. WW-1 has stated that he was doing contract work in Balihari colliery since last ten years. He has filed all the work orders issued to him awarding him contract which have been marked Ext. W-1 series. They are in all 13 work orders of different period. He has said that he was given contract work of coal loading, stone cutting and gallery drivage and the concerned persons had worked udner him. According to him he used to hand over the concerned workmen to the Agent of the concerned colliery who put them to work in the colliery. The concerned persons have filed separate affidavit in which they have admitted that they worked under contractor. This witness is still getting some contract work but in other collieries. This witness has further said that he used to make payment of wages to the concerned persons after getting payment from the management. He has further stated that he was maintaining daily attendance register for the concerned workmen and the management also used to mark their attendance and paid them the amount of wages after tallying their register with that of this witness. The sponsoring union has filed the entire wage-sheets which have been marked Ext. W-4 to W-4/13. They have also filed affidavits of workmen which are Ext. W-2 series and in those affidavits it has been mentioned that the concerned persons were working under contractor as contractor workmen under different contractors. The sponsoring union has also examined one of the concerned workman, Jagarnath Rana, WW-2 and he has clearly stated that he was working under contractor, Jagdish Pandey. The sponsoring union has also examined Jhaman Ram, one of the concerned workmen WW-3 who has admitted that he alongwith others were working under Jagdish Paswan and D. Singh, contractors and they were getting wages from these contractors. Further according these witnesses their work was being supervised by the management. The sponsoring union has also examined Badri Alam Khan, WW-4 who is the Secretary of the sponsoring union and is also Attendance Clerk working in Balihari colliery. He has admitted that he is aware, in past the management was awarding work to the contractors through work order and also through written letters. He has recognised one of such letter which has been marked Ext. W-3. He has said that the attendance of the contractor workmen was also being recorded in Form 'C' register by him, but he has not filed the same because it belongs to the company. The sponsoring union has not filed any petition to call for the Form 'C' Register from which it would have been clear as to how many days in which year which of the concerned workman has worked. According to the workmen and the sponsoring union the concerned workmen have worked for more than 190 days, but the wage-sheets which they have filed goes to show that in the year 1986 they have worked for only 80 days, in the year 1987 they have worked for only 79 days, in the year 1988 they have worked for 130 days and in the year 1989 they have worked for 76 days only. Thus, the wage-sheets through which payment were made to the concerned persons goes to show that they have not worked for 190 days or more in a calendar year. The maximum number of attendance in the year 1988 was only 130 days and it appears that in the year 1988 they have worked only in the months of February, April, June, August and September. Thereafter they have not worked from October, 1988 to July, 1989. Again it appears that in the year 1987 they have worked only in the months of March, June and December. Similarly in the year 1986 they have worked in the months of September, October and December only. Thus, it is clear that they have not worked for any calendar year for more than 190 days. The management too has examined two witnesses, namely, MW-1—Raj Kumar Dutta and MW-2– Purshottam Das who were working at the said colliery and they have said that the concerned workmen were working under the contractors

and they were not doing any prohibited category of job. They have also stated that the concerned workmen have never put in 190 days or more attendance in a calendar year. Although WW-4—Badri Alam Khan, Area Secretary of sponsoring union is the Attendance Clerk and he is the custodian of that attendance register in Form 'C', but no petition has been filed to direct the management to produce Attendance Register in Form 'C'. Since WW-4, Badri Alam Khan who is Secretary of the sponsoring union has full knowledge of the days of attendance in a calendar year, therefore it is apparent that no such petition was filed, otherwise it would have been fortified the claim of the sponsoring union that the concerned workmen had worked for 190 days or more in a calendar year. Thus, from the materials available on record it appears that the concerned persons were working under contractor, Jagdish Pandey and D Singh. From the materials available on record it is apparent that the establishment was engaging only 13 persons in a calendar year and the contractor also was engaging only 13 persons, therefore as per Section 4(a) & (b) of the Contract Labour (Regulation and Abolition) Act, 1970 was not applicable and therefore the requirement of registration of the establishment of the principal employer and obtaining of licence by the contractor does not arise.

6. The management has said that the concerned persons were not engaged in prohibited category of job, like, stone cutter, coal cutting, coal loading and unloading, but from the work orders Ext. W-1 series it appears that the work order shows the work assigned to the contractor was stone cutting, drivage with drill in coal, cutting duggls in stone dressing roof, floor cutting, recess in coal and side dressing in coal which require cutting of stone and coal also Therefore certainly the concerned persons were employed in coal cutting stone cutting which appears to be temporary and casual nautre because such workers require to be done occasionally. The cutting of coal and stone assigned to the contractor was not voluminous work, rather, it was of a very small quantity. Since the concerned persons were working in stone cutting and coal cutting may be in small quantity only which are the prohibited categroy of job in which contractor has been prohibited to be engaged Therefore the concerned persons must be deemed to be the workmen of principal employer i.e. M/s. B.C.C. Ltd. But since none of them have worked for 190 days or more, therefore it cannot be said that they were engaged in prohibited and perennial nature of job rather, the fact that they have worked for less than 190 days in a calendar year, therefore they were doing the job of casual and temporary nature Therefore, in my opinion, since they have not completed 190 days work in a calendar year doing the job into underground mine they do not deserve to be regularised in the employment of M/s B C C Ltd. Hydromining Project of Bahhan colliery. In the result I find that the concerned workmen are not entitled to any relief

7. In the result I render —

AWARD

That the concerned persons Jhaman Ram and 12 others are not entitled for regularisation as permanent employees of the management of Hydromining Project of M/s B C C Ltd. nor they are entitled to any other relief.

SARJU PRASAD, Presiding Officer

नई दिल्ली, 14 मार्च, 2001

का.आ. 757.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी. सी. सी. एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं-1, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-3-2001 को प्राप्त हुआ था ।

[सं. एल-20012/(201)/90-आई आर (सी-I)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 14th March, 2001

S.O. 757.—In pursuance of Section 17 of the Industrial Dispute Act 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. I, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCC Ltd. and their workman, which was received by the Central Government on 9-3-2001.

[No. L-20012/(201)/90-IR(C-I)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 234 of 1990

PARTIES :

Employers in relation to the management of M/s. B C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri Sarju Prasad, Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Joshi, Advocate.

For the Workmen : Shri S. Bose, Treasurer, Rashtriya Colliery Mazdoor Sangh.

STATE : Jharkhand. INDUSTRY : Coal.

Dated, the 16th February, 2001

AWARD

By Order No. L-20012(201)/90-I.R. (Coal-I) dated the 1st October, 1990 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the demand of Rashtriya Colliery Mazdoor Sangh (INTUC), Dhanbad for reinstatement of Shri Suresh Nonia, P/F Clerk with full back wages is justified ? If so, to what relief the workman entitled ?"

2 This industrial dispute has been sponsored by Rashtriya Colliery Mazdoor Sangh (INTUC) making demand for reinstatement of Suresh Nonia, P/F Clerk, who was dismissed from service by letter dated 23/25-11-82. The brief; facts of the case is that Suresh Nonia who was working as P/F Clerk on 12-9-81 was issued a charge-sheet No. 1282 dated 12-9-81 by the Agent of Jhunkundar Open Cast Project of M/s. B.C.C. Ltd. alleging that on 11-9-81 the concerned workman in connivance with Angad Singh, Ragho Singh and Verma Singh left the place of work while on duty and went to the residential quarters of R. P. Mazumdar, Sr. Welfare Officer of Jhukundar Open Cast Project. Some one of them knocked the door of R P. Mazumdar and when R. P Mazumdar came he was caught hold, assaulted and dragged out of the quarters. He was abused with filthy language and threatened to dire consequences. They were attempting to drag Sri Mazumdar upto a car No. WHA-3115 in order to kidnap him and assault him. But due to alarms raised by R. P Mazumdar, the neighbourers came and rescued him. Similar charge-sheets were issued to Angad Singh, Verma Singh and Ragho Singh also. All of them denied the charges, thereafter the management decided to hold domestic enquiry and Sri R K. Mukherjee was appointed Enquiry Officer to conduct enquiry; who submitted enquiry report holding them guilty of the charges. On the basis of enquiry report submitted by the Enquiry Officer, R. K. Mukherjee, the concerned workman Suresh Nonia and three delinquent workmen were dismissed from service by letter dated 23/25-11-82. R. P. Mazumdar had also lodged an F.I.R. of the occurrence with

Chirkunda Police Station which was investigated upon and the charge sheet was submitted against all the delinquent workmen. They were put on trial and were convicted by the Judicial Magistrate, but upon an appeal filed by them, the 1st Addl. Sessions Judge has been pleased to acquit the delinquents workmen including the concerned workman, Suresh Nonia as he did not find any corroborative evidence to the evidence of victim Shri R. P. Mazumdar. When the delinquent workmen were acquitted by 1st Additional Sessions Judge then in the year 1988 i.e. after six years of order of dismissal, the present dispute has been raised by the sponsoring union.

3. According to the sponsoring union the domestic enquiry was not fair and proper and finding of the Enquiry Officer is not based upon the enquiry report, therefore the dismissal of the concerned workman on the basis of such domestic enquiry is void. Further, according to them since the concerned workman has been acquitted by the 1st Additional Sessions Judge in appeal, therefore on that basis also he is entitled for reinstatement with full back wages.

4. The case of the management, on the other hand, is that on 11-9-82 the concerned workman alongwith Angad Singh, Verma Singh and one Ragho Singh and two unknown persons had left the place of working during duty hours and went to the residence of R. P. Mazumdar, Sr. Welfare Officer of the Colliery. They abused him, manhandled him and tried to kidnap him in a car in order to further assault him, but Sri Mazumdar was saved by the neighbours, R. P. Mazumdar had made a complaint to the management on the basis of which the concerned workmen were charge-sheeted by charge-sheet dated 12-9-82. They denied the allegations which was not found satisfactory by the management and therefore the management decided to hold domestic enquiry. R. K. Mukherjee was appointed Enquiry Officer who conducted the enquiry in impartial manner following the principles of natural justice and found the concerned workman and other workmen guilty on the basis of which they have been dismissed on the proved charge of misconduct. The allegations against the concerned workman and others are of serious nature and therefore the management is perfectly justified in dismissing the concerned workman alongwith others. Further according to them the concerned workman accepted the order of dismissal, did not raise any dispute and upon acquittal by 1st Additional Sessions Judge the sponsoring union has raised the dispute in the year 1988 i.e. after six years of the order of dismissal. According to the management the proof required in a criminal case is very strict and prosecution is required to prove the charges beyond all reasonable doubt, but in case of domestic enquiry such strict proof is not necessary and on mere preponderance of evidence misconduct can be held to be proved in a domestic enquiry.

5. The management has prayed to decide the fairness and propriety of the domestic enquiry at the first instance and if it is not found to be fair and proper then to give them a chance to adduce evidence in order to justify its action. Therefore, the fairness and propriety of the domestic enquiry was taken up as preliminary issue and it has been decided by order dated 9-6-2000 as fair and proper.

6. Since the fairness and propriety of the domestic enquiry has been decided in favour of the management the only question to be decided now is :—

> Whether on reappraisal of the evidence collected during the domestic enquiry the charges of misconduct is proved against the concerned workman, Suresh Nonia? If so, whether the punishment is proportionate to the misconduct proved against him?

FINDINGS

7. The management during the domestic enquiry has examined in all nine witnesses. Before taking their evidence it is worth to mention that on 10-9-1981 at about 10.30 p.m. S/Shri Verma Singh, Angad Singh and Ragho Singh took a jeep No. MRB 109 forcibly by snatching the key from the driver Punu Gope. Angad Singh, Dumper Driver, drove the jeep out from Junkundar Colliery accompanied by Verma Singh and Ragho Singh to some unknown destination and returned the jeep at 3.00 A.M., when the milemeter was reading 45 K.M. Again on 11-9-1981 S/Shri Suresh Nonia, Verma Singh Angad Singh and Ragho Singh went to the quarter of Shri R. P. Mazumdar, Senior Welfare Officer of Junkundar Colliery and they manhandled Sri Mazumdar as alleged in the chargesheet. Thus, against Verma Singh, Angad Singh and Ragho Singh there were also charge of taking jeep forcibly belonging to the colliery by snatching away the key from the driver, besides the charges of manhandle and assault to Shri R. P. Mazumdar, Sr. Welfare Officer on 11-9-81.

8. PW-1—Nunu Gope, WP-2—Raja Singh, PW-3—R. P. Sharma, PW-4—N. N. Bala, PW-8—S. N. Singh are the witnesses of snatching away the jeep by Verma Singh, Angad Singh and Ragho Singh. Therefore, their evidence is not material against the concerned workman, Suresh Nonia.

9. The evidence of PW-5—R. P. Mazumdar, PW-6—Ramjanam Singh PW-7—O. P. Srivastava and PW-9 S. R. Bhattacharjee is with respect to the incident of 11-9-81 i.e. the incident of assault and abusing R. P. Mazumdar, Sr. Welfare Officer. From the evidence of PW-5—R. P. Mazumdar I find that he has fully supported the allegations against the concerned workman, Suresh Nonia. He has clearly stated that on 11-9-81 at 8 A.M. when he had gone to office, the Agent called him in his office and directed him that he should submit a report in connection with taking of the jeep forcibly by snatching away the key from the Driver. He took statement of the driver and other persons and also statement of Angad Singh and he returned back to his quarters at about 2.10 P.M. At about 3.10 P.M. he heard knocking at his door and when he opened the door he found Verma Singh and others standing over the door. They wanted to see the enquiry report from him (Mazumdar). Sri Mazumdar then replied that Angad was there, you ask from him. Then Angad Singh replied that he does not remember. Then Suresh Nonia told Sri Mazumdar what is wrong on showing the report. Sri Mazumdar told him that report is not with him and will show the report when he will be in office. Then Verma Singh told him to go to office with them and show the report. When he refused to go with them, then Verma Singh caught hold of his hand and Ragho Singh and others took him to the car. On this the wife of Sri Mazumdar shouted. All of them wanted to take Sri Mazumdar to some unknown place by dragging him upto the car. On alarm, some of the neighbours, Ramjanam Singh, O. P. Srivastava and S. R. Bhattacharjee came there and saw the incident and rescued Sri Mazumdar. But the concerned workman and others went away after giving threatening to Sri Mazumdar. He has been cross examined at length, but I do not find anything to disbelieve his evidence. The evidence of this witness has been supported by PW-6—Ramjanam Singh who is an eye witness. He too has supported that the concerned workman and others were dragging R. P. Mazumdar to a car and manhandling him on 11-9-81 at 3.15 P.M. P.W.7—O. P. Srivastava has said that he arrived late in the place of occurrence but from the persons he knew about the occurrence. He has supported the occurrence as heresay evidence. PW-9—S. R. Bhattacherjee has also supported the occurrence as an eye witness. Thus, I find that besides the evidence of R. P. Mazumdar there is evidence of Ramjanam Singh, O. P. Srivastava and S. R. Bhattacherjee and they all have supported the commission of occurrence by the concerned workman, Suresh Nonia and others. Thus, I find that on scrutiny of evidence of these witnesses the misconduct is fully proved against the concerned workman, Suresh Nonia and others. I find that the finding of the Enquiry Officer is perfectly justified and a prudence man shall come to the same finding as that of the Enquiry Officer. Therefore, the finding of the Enquiry Officer is fully justified. Thus, I find that the charge of manhandling a superior officer and dragging him forcibly out of his quarters is fully established against the concerned workman and others.

10. So far the acquittal by the 1st Additional Sessions Judge is concerned it appears that in the criminal case also R. P. Mazumdar has supported the occurrence but since there were no other corroborative evidence and some of the witnesses turned hostile, therefore benefit of doubt has been given to the concerned workman. It is settled principle of law that in a criminal trial there is a principle that nine guilty persons escape free, but not a single innocent person should be punished. Therefore, the test in the criminal trial is very rigious than the standard of proof in a domestic enquiry. Moreover, in the domestic enquiry besides the victim R. P. Mazumdar, Ramjanam Singh and S. R. Bhattacherjee have supported the occurrence as eye witness and O. P. Srivastava as hearsay evidence. Thus, I find that the finding of the Enquiry Officer is justified.

11. Accordingly this question is answered in affirmative.

12. So far quantum of punishment is concerned the alleged misconduct is very serious one and the dismissal from service cannot be said to be disproportionate to the proved misconduct against the concerned workman. But the sponsoring union has brought on record that other three delinquent persons, namely, Verma Singh, Angad Singh and Ragho Singh have tendered apology and mercy petition and the management after taking lenient view has been pleased to order for reinstatement on giving an undertaking to be of good behaviour in future with the condition that the period between dismissal and reinstatement shall be treated as dies-non and they will not be entitled for wages for the period. Since the allegations against Angad Singh, Verma Singh and Ragho Singh were similar to that of the present concerned workman, Suresh Nonia, therefore, in my opinion, this workman is also entitled to such lenient view if he gives an undertaking of his good behaviour and conduct in future, then he may be reinstated in his old post in the same grade in which he was working at the time his dismissal from service and the period from the date of dismissal till reinstatement shall be treated as dies non and he will not be entitled for any wages or any consequential benefits for this period.

13. In the result I render—

AWARD

That the demand of the sponsoring union Rashtriya Colliery Mazdoor Sangh, for reinstatement of Suresh Nonia, P/F Clerk with full back wages is not justified. However, he is ordered to be reinstated without back wages if he gives an undertaking in writing to be of good behaviour and conduct in future in the same old post and same grade from which he was dismissed and the period from the date of dismissal till reinstatement shall be treated as dies-non and Suresh Nonia will not be entitled for any wages for the said period nor he shall be entitled to any consequential benefit for that period. The management is directed to reinstate him on giving undertaking by the concerned workman within 30 days from the date of publication of the award.

SARJU PRASAD, Presiding Officer

नई दिल्ली, 14 मार्च, 2001

का.आ. 758— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और इनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं.-1, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-3-2001 को प्राप्त हुआ था ।

[सं. एल.-20012/(226)/91-आई.आर (सी-I)]
एन. पी. केसवन, डैस्क अधिकारी

New Delhi, the 14th March, 2001

S.O. 758.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCC Ltd. and their workman, which was received by the Central Government on 9-3-2001.

[No. L-20012/(226)/91-IR(C-I)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1) at DHANBAD

PRESENT :

Shri Sarju Prasad,
Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 26 of 1993

PARTIES :

Employers in relation to the management of Kuchchi Balihari Colliery of M/s. Bharat Coking Coal Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union, Dhanbad.

On behalf of the employers : Shri H. Nath, Advocate.

STATE : Jharkhand INDUSTRY : Coal

Dated, Dhanbad, the 19th February, 2001

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(226)/91-I.R. (Coal-I), dated, the 11th December, 1992.

SCHEDULE

"Whether the demand of Bihar Colliery Kamgar Union (CITU) for regularisation of Shri Lall Babu Singh, Amulo Oraon, Sambhu Prasad, Kishun Dhobi, Ram Kumar Singh, Sanjay Singh, Ajoy Singh, Yogal Pandey, Randhir Singh, Amrit Oraon, Omesh Oraon, Nepul Oraon, Bhikhu Mahto, Nand Kishor Yadav, Vijoy Kumar Saw, Yugesh Thakur, Sudhir Rajak and Prabhu Paswan on the roll of BCCL and payment to them the wages as per NCWA with retrospective effect is justified ? If so, to what relief these workmen are entitled ?"

2. This industrial dispute has been referred to adjudicate whether the demand of Bihar Colliery Kamgar Union (in short B.C.K.U.) for regularisation of Shri Lall Babu Singh and others as mentioned in the schedule of reference on the rolls of BCCL and payment of wages as per NCWA with retrospective effect is justified ? If so to what the workmen are entitled to ?

3. The case of the sponsoring union is that Lall Babu Singh and others whose names find place in the schedule to the reference order had been working in the permanent and pronibitory category of job of Tyndal at Kuchchi Balihari Colliery since long under the direct control and supervision of the management of BCCL. The job of Tyndal is of permanent nature and as per Wage Board Recommendation the Tyndals are entitled for wages of Cat. IV but the concerned persons are being paid less wages through the different intermediaries in order to camouflage the real issue. The management has prepared all paper arrangement to show them that they are working under different intermediary and thereby debarring them the wages of Tyndal as per NCWA. The management on the basis of aforesaid paper arrangement has started paying them in the name of Lal Babu Singh with effect from 12-12-1989, although Lal Babu Singh is also one of the concerned workman who is performing similar job like other workmen under the control and supervision of the management of BCCL. The concerned persons have made demand from the management to regularise them and to make payment as per NCWA but the management did not meet their demand Therefore they raised an industrial dispute and after failure report from the AIC(C) Dhanbad the present dispute has been referred.

4. The case of the management on the other hand is that the present dispute is not legally maintained either in law or in fact and there is no relationship of employer and employee between the management of BCCL and the concerned persons. However, the management in its Written Statement has admitted that Shri Lal Babu Singh and 17 others have worked in Kuchchi Balihari colliery of 6/7 Pits Hydro Mining under contractor during the year 1987-88 and when the contractor did not work they, themselves formed a cooperative named as Pragatishil Shramik Sahayog Samiti Ltd., Patherdih having branch at Balihari Colliery. The above Samiti has nominated two persons amongst themselves namely

Lav Kumar Ram and Brijraj Mishra who supervised the work performed by them. They have also authorised to sign the bills and receive the cheque and to submit the same to the cooperative Bank for payment. The said Pragatishil Shramik Sahayog Samiti Ltd. has been awarded contract work of civil construction job, cleaning of debris, transport of machineries etc. which are not prohibited type of job. The employees of the cooperative society has been engaged by the cooperative society. Therefore, there is no relationship of employer and employee between the management of BCCL and the concerned persons whose names find place in the schedule to the reference. Similar disputes were raised by the R.C.M.S. union prior to this dispute but the same were withdrawn by the union finding that there are no merit. According to them since the concerned persons were neither appointed by the management nor they worked under them, on the contrary they are the employees of cooperative society. Therefore, the management has neither got legal or moral responsibility to regularise them. According to them BCCL is having surplus work force and is running in loss. Therefore, the management is not at all liable to regularise the concerned persons as its employee. Therefore, the demand of the sponsoring union is not justified and the concerned persons are not entitled to any benefit.

5. Thus from the pleadings of the parties it is apparent that Lal Babu Singh and 17 others whose names find place in the schedule to the reference order had been working in Kachchi Balihari colliery in Pit No. 5/7 on different misc. job. According to the sponsoring union they were engaged by the management to do the prohibited category of job of Tyndal which is of permanent nature. Therefore, the concerned persons should be treated the workmen of the management and they are entitled to be regularised in the employment of the management in view of certain principle of law by Apex Court of the country. The plea of the management on the other hand is that the concerned persons are the employees of the cooperative society formed by them in the name of Pragatishil Sahayog Samity and who are engaged in civil and temporary nature of job on the basis of different work orders. Therefore, they are not the workmen of the management and on this score alone the reference is bad and they are not entitled to any relief. The sponsoring union has pleaded that the paper arrangement made by the management is nothing but to camouflage the real issue and in fact the concerned persons are the workmen of management engaged by them and their work is being supervised by the competent authority of the management. Thus from the pleadings of the parties the points to be decided in this reference are :—

1. Whether there is relationship of employer and employee between the management of BCCL and the concerned persons whose names find place in the schedule to the order of reference ? If so, are they entitled for regularisation on the roll of M/s. BCCL ?

2. What relief or relief if any to the concerned workmen are entitled to ?

6. FINDINGS :

POINT NO. 1

The sponsoring union has examined Lal Babu Singh who has come to say that he along with others are working as Tyndal since the year 1985. They were working into the underground mine for 8 years every day and their attendance was being marked in the register as well as in the Camp Lamp Office while obtaining Cap Lamp. They used to do the days work as allotted to them by the Manager Shri Sharma. The Mining Sirdar and Overman used to supervise their work. He has produced three sheets known as Stores Issue slip under the signature of Shri Sharma, Manager marked Exts. W-1 to W-1/2 series through which they were issued materials from the store. He has also produced two sheets of photo copies of different sheets under the signature of Shri Sharma, Manager of the Mine in which he used to write the names of the workmen who were so put to work on different dates. These have been marked Ext. W-2 and W-2/1. He has also produced photo copies of 8 sheets under the signature of Shri Sharma and Shri R. K Dutta Agent of the colliery which have been marked Ext. W-3 to W-3/7. According to him he along with others had been working for more than 240 days in a year in permanent nature of job but Manager stopped them from work since March, 1993 without any notice or compensation. This witness has further produced two letters under the signature of Shri Sharma Manager which have been marked Ext. W-4 and W-4/1 and also two job registers on the pages of which there are signature of Shri Mathur and Shri Jhari, Foreman. This register was prepared in two copies one remined with the concerned workmen and other copy with the management. These job registers have been marked Ext. W-5 and W-5/1. He has clearly stated that they have never constituted any cooperative society. He has denied that Brij Kumar Mishra and Lovkumar were ever authorised by them to sign bills and receive cheques and or to supervise their work. He has clearly stated that Lovkumar was a permanent Mazdoor working under the management. He has further stated that the management used to pay them less wages than admissible to Tyndal and the management used to prepare and manufacture bills in order to maintain that they are the contractor workers. He has produced nine such bills which have been marked Ext. W-6 series. Thus I find that he has fully supported its case. From the job register it appears that there is description of job upon which they have been engaged, sometimes they have been engaged for ash cleaning job, sometimes for coal transport, sometimes on Tyndal Job i.e. carrying of heavy machineries from one place to other place, sometimes in the job of stone cutting and coal cutting. Ext. W-1 shows the requisition slip issued for different implements from the stores Ext. W-2 series are the name of the concerned persons showing their engagement on different job on different dates. Ext W-3 series are the notesheets of the management under the signature of the Superintendent of Mines, Senior Executive Engineer, Agent of the collirey and the General Manager of the Area. From these notesheets it is apparent that due to shortage of departmental manpower cooperative workers were engaged in misc. underground job related to production. Such persons were engaged in work under the strict supervision of the Officers and it has been certified that the man power consumed against the job mentioned are minimum possible. By these notesheets amount for payment to such contractor workers have been sought to be approved @ Rs. 21.16 per head. Thus from Ext. W-3 series which are eight in numbers it is clear that the cooperative workers were engaged by the management due to shortage of departmental manpower on the job related to production. The sponsoring union had filed an application for giving direction to the management to produce these notesheets but the management did not file the original nor they have offered any explanation for not filling the same. The management has examined three witnesses but none of them has challenged the genuineness of these notesheets. Ext. W-3 series. The management in cross-examination to WW-1 Lal Babu Singh who has produced and proved these notesheets, has not suggested that these notesheets are manufactured documents. Thus I find that genuineness of these notesheets have not been challenged in any stage by the management. Therefore, these notesheets clearly speak that cooperative workers were engaged in misc. underground job related to production due to shortage of departmental manpower thus the notesheets falsify the plea of the management that cooperative workers were working under any contracter. These notesheets are of the relevant period. There are two notes of Senior Mining Engineer marked Ext. W-4 and W-4/1 which also indicate that due to shortage of manpower cooperative workers were engaged in misc. underground job related to production @ Rs. 21.16P per head. Ext. W-6 series are the bills of M/s. B.C.C.L. making payment to the cooperative workers @ Rs. 21.16P. per head for the concerned period. Thus the documnets have also not been challenged to be not genuine. Thus it is clear that the cooperative workres were engaged in the job related to production during the concerned period by the management.

7. The management has examined three witnesses and has produced certain papers in order to show that the concerned persons are the contractors workers. The first document filed by the management is Ext. M-1 series which are photo copy of the I.D. card of the concerned persons showing that they are the cooperative workers of Pragatishil Shramik Sahayog Samity Ltd. But in these I.D. card there is no signature of any office bearer of the cooperative rather the same bear the signature of Senior Personnel Officer of the Colliery. Besides this the management has filed two letters dt. 12-8-88 and 20-7-96 signed by B. M. Lal which has been marked Ext. M-2 and M-2/1 respectively and another letter dt. 8-3-98 under the signature of Shri P. Maharaj marked Ext. M-2/2. They have also produced 5 work order bearing the signature of R. K. Dutta Agent which has been marked Ext. M-3 to

M-3/4. The three letters marked Ext. M-2 series are the letters addressed to the ALC(C), Dhanbad during the conciliation stage by the management putting forth their case before the Conciliation officer and therefore they are not very much relevant for the decision of the present case. The management has filed 5 work orders which have been marked Ext. M-3 to M-3/4. These work orders show that the Pragatishil Shramik Sahayog Samity's Lalbabu Singh gang was engaged for the misc. job of Mud cleaning of dram, stone cutting, lime packing, drain cutting in coal for widening site dress in coal with explosive and disposal. These work orders have been signed by the Agent, Shri Dutta and one Braj Raj Mishra whom the management claimed that the concerned workmen have authorised to supervise their work and receive cheque but the management has not filed any paper to show that the concerned persons have ever authorised the said Braj Raj Mishra to supervise their work or receive any work order or cheque from the management. Rather, WW-1 Lalbabu Singh has clearly stated that he does not know this Brajraj Mishra. These work order do not bear the signature of any of the concerned workman or Lalbabu Singh who is said to be gang leader of the concerned persons. The management's own witness MW-1 in his evidence has admitted that when the concerned workmen were doing this work under a contractor tender and quotations were called for but when they started working by forming a cooperative society no tender or quotation was called Thus it is apparent that the so-called cooperative society has not filled any quotation nor any tender was invited by the management and there is no evidence from the side of the management to show that any valid tender or contract was made by said cooperative society. On the other hand the notesheets of the management clearly goes to show that the concerned persons were engaged due to shortage of regular manpower in the job related to production. Although the management is asserting that the concerned persons have formed a cooperative, MW-1 has stated that he does not know if the said cooperative society is registered one or unregistered one or who are the members of that society. He has admitted certain letters written by the Superintendent and management of the colliery which are Ext. W-7 series. From these it is apparent that whenever any complaint was received with respect of any of the concerned workman the management used to write letters to Lalbabu Singh who is said to be gang leader. In one of the letter the management asked him to engage more persons MW-1 has further admitted that the concerned persons were shifting and transporting machines which is the job of Tyndal which is a permanent nature of job and has been prohibited for engagement of contract labour The management has also examined MW-2 Shri K M Prasad to show that the concerned persons are the workers of one cooperative society which is a contractor He has stated that coal cutting, earth cutting are prohibited category of job and stone cutting job is also prohibited category of job in which contractor cannot be used MW-3 B N Jha who is Asstt Survey Officer has come to say that all the concerned persons were the workers of the contractor Pragatishil Shramik Sahayog Samity and he used to make measurement of work done by the contractor and prepared bills. But the management has not filed any measurement book or the bills prepared by this witness According to the management cheques were being issued to the said cooperative society but no such cheque or counterfoil has been produced nor there is any endorsement in any of the bill regarding receipt of any cheque by any of the persons of the said cooperative society Thus from the materials available on record I find that there is reliable evidence to show that the concerned persons were engaged by the management for misc job related to the production of coal due to shortage of manpower during the concerned period but in order to camouflage the matter the management has made certain paper arrangement regarding granting them as contractors workers under the Pragatishil Shramik Sahayog Samity The management has not produced any document to show that the establishment of the management was registered under the Contract Labour (Regulation and Abolition) Act 1970 nor they have filed any licence of the contractor. Therefore, in view of the settled principles of law as pronounced by Hon'ble Supreme Court of India in the case of Air India Statutory Corporation versus United Labour Union reported in 1997 Lab I.C page 365, in absence of registration of the establishment of employer under Contract Labour (Regulation and Abolition) Act and licence to the so-called contractor the contractors labourers must be deemed to be the workmen of the principal employer Therefore in absence of any registration of the establishment of the management and licence to the so-called contractor the concerned persons must be treated to be the workmen of the principal employer i.e. M/s Bharat Coking Coal Ltd. Therefore, the concerned persons are the workmen of M/s. BCCL and there is relationship of employer and employee between them.

8. Further, in view of the settled principles of law as laid down in the aforesaid case of Air India Statutory Corporation by the Hon'ble Supreme Court when appropriate Govt. has prohibited contract labour in any specified work then engagement of contract labour on such work creates relationship of employer and employee between the principal employer and the workmen. The management witnesses themselves have admitted that stone cutting, coal cutting and Tyndal work are the prohibited category of job under which engagement of contract labour has been abolished by the appropriate government. From the work orders filed by the management it appears that the cooperate workers i.e. the concerned persons were engaged in the job of coal cutting, stone cutting, Tyndal work i.e. carrying of heavy machineries from one place to another and even they were engaged in surfacing of coal with blasting which also is prohibited category of job which cannot be performed by a contractor labourers. Therefore, in view of the aforesaid ruling of the Hon'ble Supreme Court it has to be inferred that the relationship of employer and employee has been created the moment the concerned persons were engaged in the prohibited category of job. The management has relied upon another Supreme Court Judgement which is popularly known as Dinanath's case but that has already been over ruled. The management witnesses themselves have admitted that under the Mines Act it is the management which supervises the work of the concerned persons also They have admitted that unless a person is competent and authorised by the management he cannot supervise the work of even contractor worker into the underground mines Therefore, it is clear that the concerned persons were doing the prohibited category of job since long under the direct supervision of the management and they were engaged by the management due to paucity of man power. Therefore, I find that relationship of employer and employee exists between the management of M/s. B C C. Ltd and the concerned persons and since they were engaged in permanent nature of job they are entitled to be absorbed as permanent employee of the management from the date they are doing the prohibited category of job. Accordingly this point is answered.

POINT NO. 2 :

9 From the discussions made above I find that the concerned persons were working in the permanent nature of job and thus they are the workmen of M/s. BCCL but they have been illegally stopped from work. Therefore, they are entitled to be reinstated in the misc. job in the category of General Mazdoor from the date of stoppage of their work but there is no evidence that the concerned persons were not gainfully employed from the period they were stopped work and since M/s. BCCL is running in loss, therefore the concerned persons shall not be entitled to any back wages. However, they are entitled for regularisation as General Mazdoor.

In the result, I render the following :

AWARD

that the demand of Bihar Colliery Kamgar Union for regularisation of the concerned persons on the roll of M/s. BCCL as General Mazdoor is justified They are ordered to be regularised within 30 days from the date of publication of the Award without any back wages failing which the concerned persons shall be entitled to wages as per NCWA of General Mazdoor Category I from the date of publication of the Award.

SARJU PRASAD, Presiding Officer

नई दिल्ली, 14 मार्च 2001

का.आ. 759— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स इंडियन आयल कार्पोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और इनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं.-1, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-3-2001 को प्राप्त हुआ था ।

[सं.एल.-20040/39/94-आई.आर.(सी-I)]
एन. पी. केसवन, डैस्क अधिकारी

New Delhi, the 14th March, 2001

S.O. 759.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. I, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. I.O.C. Ltd. and their workmen, which was received by the Central Government on 9-3-2001.

[No. L-20040/39/94-IR(C-I)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 65 of 1995

PARTIES :

Employers in relation to the management of Indian Oil Corporation Ltd., Barauni.

AND

Their Workmen.

PRESENT :

Shri Surjit Prasad, Presiding Officer.

APPEARANCES :

For the Employers : Shri K. N. Gupta, Advocate.

For the Workman : Shri B. Joshi, Advocate.

STATE : Jharkhand. INDUSTRY : Oil.

Dated, the 26th February, 2001

AWARD

By Order No. L-20040/39/94-I R. (Coal-I) dated, the 21st June, 1995 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

> "Whether the claim of the workman Shri Mohan Mahato is justified that he was an employee of Barauni Oil Refinery of Indian Oil Corporation Ltd., and that he was removed illegally from service w.e.f. 7-5-93 ? If so, to what relief is the workman entitled ?"

2. The Central Government, Ministry of Labour, has been pleased to refer to adjudicate whether the claim of Mohan Mahato that he was an employee of Barauni Oil Refinery of Indian Oil Corporation and that he was removed illegally from the service with effect from 7-5-93 is justified ? If so, to what relief he is entitled ?

3. The brief facts of the present industrial dispute is that the concerned workman Mohan Mahato has raised the present dispute alleging that he was employed by Barauni Oil Refinery of Indian Oil Corporation Ltd. for doing the job of messenger as daily rated worker on wage of Rs. 24 per day by the Dy. Manager, Electrical, Maintenance, Sri K. N. Tiwary and Sr. Elect. Engineer, Shri Dharambir Prasad on 12-5-85 and he worked there till 6-5-93 continuously and he has put attendance of 323 days in the year 1991 and 333 days in 1992, but he has been illegally and without complying the provision of law terminated from service on 6-5-93 as some foul play done by K. N. Tiwary and B. K. Sinha, in which recovery of materials made by the Vigilance Officer and the concerned workman has made factual statement to the Vigilance Officer.

4. The case of the management, on the other hand, is that the concerned workman was a contract employee engaged by different contractors from 16-5-89 to 6-5-93 and whenever the contractor was changed the service of the concerned person as an employee of the contractor stood terminated. He was never appointed by the management of Barauni Oil Refinery of Indian Oil Corporation Ltd. nor he was made payment by the Indian Oil Corporation Ltd. Since he was a contractor's labour the management has nothing to do with the termination of his service. Therefore, no relationship of employer and employee existed between the management of Barauni Oil Refinery and the concerned workman, Mohan Mahato and therefore the present reference is bad. On these pleas the management has submitted that the concerned workman is not entitled to any relief.

5. It is admitted by the management of Barauni Oil Refinery that the concerned workman had worked from 16-5-89 to 6-5-93. The management has not refuted the claim of the concerned workman that his attendance in the year 1991 was 323 days and in the year 1992 was 333 days. The management has admitted that the concerned workman was working as messenger/peon of the contractor, but the concerned workman, Mohan Mahato has stated that he was working as messenger/peon of the management and used to carry different documents from one office to other, go to Post Office and Bank, carrying papers and documents on behalf of the management of Barauni Oil Refinery as per instruction of the official of the Barauni Oil Refinery.

6. The concerned workman has examined himself as WW-1 and has stated that he was working at Barauni Oil Refinery from 11-5-89 to 30-11-92 regularly as messenger, but he was stopped from work without notice or retrenchment compensation. He has denied that he was appointed by Sheobalak Singh Contractor. The concerned workman has filed certain documents to prove that he was working under direct control of the management of Barauni Oil Refinery. Ext. W-1 is an application for renewal of gate pass from 16-10-89 to 15-12-89. In this application he has mentioned that he was working in Electric Lab. Office under MNMEI. This application has been endorsed by Awadesh Kumar, Maintenance Manager (Electrical) of Barauni Oil Refinery who has recommended for extension of gate pass from 16-10-89 to 15-12-89. In this application the Maintenance Manager (Electrical) has not mentioned that the concerned workman is a contractor's worker. The concerned workman has further produced Ext. W-2 to Ext. W-12 from which it appears that the officers of Barauni Oil Refinery had ordered for security Gate No. 1 to allow the concerned workman to carry files to Administrative Building, Pipeline Office, Post Office and Bank. Thus from these gate passes, Ext. W-2 to W-12 it reveals that the concerned workman has been regularly carrying files to Administrative Building, Pipeline Office, Post Office and Bank as messenger/peon of Barauni Oil Refinery. Besides this the concerned workman has also filed attendance sheet Ext. W-13 in six sheets to show that he has worked on different dates which has been initialled by the officers of Barauni Oil Refinery. Thus it is apparent that the concerned workman was working under direct control and supervision of the management of Barauni Oil Refinery. The management, on the other hand, in order to prove that he is contractor worked has examined MW-1 Shib Bolak Singh, the alleged contractor who has said that Mohan Mahato was working under him in the year 1989 and 1990 onwards. He was assigned contract for transporting in the Refinery; taking articles from one office to another office was the nature of his contract. The concerned workman worked under him for sometime thereafter he used to work under some other contractors. He has said that contract work was given to him as per tender and tender papers can be produced. But the management has not filed any tender papers except one work order which is dated 13-4-92

Prior to 13-4-93 although this witness claims to be a contractor under Barauni Oil Refinery, but no work order has been produced nor any documents has been produced to show that he was assigned any contract as alleged by the management. The work order dated 13-4-93 which has been marked Ext. M-1 goes to show that the work assigned to him was unskilled nature of job associated with temporary connection, scraps, area cleaning etc. in Electrical Zone-II ACU. Prior to this what was the nature of job which was assigned to him has not been filed by the management. This work order does not describe that he was assigned any work for carrying out documents and papers of the management to different office as messenger/peon used to do. If at all the so-called contractor, Shib Balak Singh was assigned the job of area cleaning etc. then such job has been prohibited to be given to the contractor by the Central Government by issuing of notification and in a number of rulings by our Apex Court has held that sweeping and cleaning jobs are of permanent nature in which contract has been abolished and if contract labour is engaged in such job of plant cleaning, sweeping etc. which is permanent and perennial nature such contract workers shall be deemed to be workmen of principal employer and such workmen shall be entitled for regularisation as permanent employees of the principal employer from the date of employment in such prohibited category of job. A reference may be made to the case of Air India Statutory Corporation Vs. United Labour Union reported in 1997 Lab. I.C. 365 and the case of Secretary, Haryana State Electricity Board Vs. Suresh and others reported in AIR 1999 (SC) page 1160. In the case of Secretary, Haryana State Electricity Board it has been held that the Contract Labour (Regulation and Abolition) Act does not intend to totally abolish the contract labour, but engagement of labour force through contractor to do the work of permanent nature is however intended to be abolished. Therefore the work order which has been filed by the management and marked Ext. M-1 goes to show that contractor was engaged for cleaning and sweeping of the plant which is a permanent and perennial nature of work. The management has admitted that the concerned workman has been working for about four years right from May, 1989 to May, 1993 and they have not disputed that in each calendar year the concerned workman had worked for more than 240 days. Thus it is apparent that the concerned workman was engaged in permanent and perennial nature of job. The management has further examined MW-3 K. N. Tiwary who has come to say that the concerned workman was engaged by the contractor, Shib Balak Singh. But in cross-examination he has said that he was doing the job of brooming and sweeping. However, Exts. W-1 to W-12, show that the management was taking the work from him as messenger/peon for carrying files which is a job to be performed by regular peon. MW-2 J. W. Kujur has come to say that the concerned workmen was a contract worker and through Exts W-1 to W-12 the workman was engaged for work by contractor, but in none of these exhibits there is mention that the concerned person was a contract worker. The management in order to prove that the concerned workman was a contract worker has further filed Ext. M-2, contractor's photo pass register to show that he was a contractor's worker. This photo pass register is with respect to get pass issued on 21-4-93 which was valid upto 20-7-93. But the management has not filed any photo pass register prior to this period although it is admitted that the concerned workman is working in Barauni Oil Refinery in the electrical maintenance lab. right from May, 1989. The management has further filed Ext. M-3 series which are different correspondences between the Factory Inspector and the management of Barauni Oil Refinery by which the concerned workman has claimed unpaid wages for 36 days but it was ultimately paid by the management of Barauni Oil Refinery vide Ext. M-4. In these correspondences the management has taken plea that the concerned workman is a contractor's worker. The management has also filed two xerox copies of application for security pass to work inside Refinery area which has been marked Exts. M-5 and M-5/1. These are the applications for the period 11-8-92 to 29-8-92 and for three months as per work order dated 2-5-90 for issue of gate pass in the name of different contractor's workers including the concerned workman. The management has further filed payment of wage-sheet Ext. M-6 to show that the contractor has made payment to Mohan Mahato on 24-8-92, 2-9-89 and 31-8-89. On the basis of these documents the management has asserted that the concerned workman was a contractor's worker. In such a nature of case the Tribunal is required to lift into veil and pierce, the veil and see whether the so called contract system in a real one or is a camouflage to disguise the real issue. The management has not filed any tender notice to show that any tender was floated right from May, 1989 to May, 1993. The management has not filed any quotation nor they have filed any agreement between the management and the so-called contractor. They have filed only one work order dated 13-4-93 which goes to show that the contractor was assigned the job of sweeping and plant cleaning which is a prohited category of job in which contractor cannot be engaged, therefore such job being permanent and perennial nature under the Contract Labour (Regulation and Abolition) Act, 1970, prohibit contract system in permanent and perennial nature of job. Admittedly the management is getting the job assigned done round the year, therefore the engagement of the concerned workman was not on any temporary or casual nature of job, rather he was doing a permanent and perennial nature of job. The contract Labour (Regulation and Abolition) Act, 1970 prohibits engagement of contractor in such job. Furthermore, every principal employer of an establishment to which the Contract Labour (Regulation and Abolition) Act, 1970 applies is required to be registered for engagement of contractor and similarly the contractor who employs more than 20 persons is required to possess licence under the said Act. But the management has neither pleaded nor proved that the Barauni Oil Refinery is a registered establishment under the Contract Labour (Regulation and Abolition) Act, 1970 nor they have pleaded that Shib Balak Singh so-called contractor is licencee. It is true that a contractor who engages less than 20 persons does not require licence, but the establishment of principal employer must be registered establishment under the Contract Labour (Regulation and Abolition) Act. It is settled principle of law that the effect of non-registration of establishment of principal employer and the contractor possessing no licence is that the contractor worker must be treated to be employed under the principal employer. Therefore, the contention of the management that the concerned workman is a contractor worker and therefore there is no relationship of employer and employee between the management of Barauni Oil Refinery and Mohan Mahato must fail in view of the settled principle of law. Therefore on consideration of the entire evidence and materials placed in this case I find that the concerned workman, Mohan Mahato has been working in Barauni Oil Refinery from sometime in the month of May, 1989 till 6-5-1993 continuously on permanent and perennial nature of job and the establishment of Barauni Oil Refinery failed to prove that its establishment is a registered establishment under the Contract Labour (Regulation and Abolition) Act and the so called contractor, Shib Balak Singh is a licencee. Therefore there is relationship of employer and employee created between the management of Barauni Oil Refinery and the concerned workman even if he might be engaged through contractor in contravention of the provision of the Contract Labour (Regulation and Abolition) Act, 1970. Thus, I find that the contention of the management that the present reference is bad is totally misconceived.

7. Since we have found that the concerned workman has been working on permanent nature of job as messenger/peon and also in sweeping and brooming, he is a workman of Barauni Oil Refinery and therefore his termination without following the legal procedure as laid down under Section 25-F and N of the Industrial Disputes Act must be held to be illegal. Admittedly the concerned workman has not been charge-sheeted nor he has been paid any retrenchment compensation and other retrenchment benefits, therefore his termination must be held to be illegal.

8. From the discussions made above I find that the concerned workman is entitled for reinstatement as messenger/peon and regularisation as permanent employee of the Barauni Oil Refinery of Indian Oil Corporation Ltd. However in the circumstances of the case he shall be reinstated without back wages.

9. In the result I render—

AWARD

That the claim of the workman, Mohan Mahato that he was an employee of Barauni Oil Refinery of Indian Oil Corporation Ltd. is justified and his removal from service with effect from 7-5-1993 is illegal. He is entitled for reinstatement but without back wages as permanent employee

in the post of messenger/peon. The management is directed to implement the award within 30 days from the date of publication of the award failing which the concerned workman shall be entitled for wages of messenger/peon from the date of publication of the award.

SARJU PRASAD, Presiding Officer

नई दिल्ली, 15 मार्च, 2001

का.आ. 760:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत गोल्ड माइन्स के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद नं.-1 के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-3-2001 को प्राप्त हुआ था ।

[सं.एल.-43011/2/91-आई.आर(विविध)]
बी. एम. डेविड, अवर सचिव

New Delhi, the 15th March, 2001

S.O. 760.—In pursuance of Section 17 of the Indstrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Dhanbad No. 1 as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Gold Mines and their workman, which was received by the Central Government on 13-3-2001.

[No. L-43011/2/91-IR(Misc.)]
B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I. DHANBAD.

In the matter of a reference under Sec. 10(1)(d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 28 of 1994.

PARTIES :

Employers in relation to the management of Bharat Cold Mines.

AND

Their Workmen.

PRESENT :

Shri Sarju Prasad, Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Joshi, Advocate.

For the Workmen : Shri D. Mukherjee, Advocate

STATE : Jharkhand. INDUSTRY : Gold Mine.

Dated, the 9th February, 2001

AWARD

By Order No. L-43011/2/91-IR(Misc.) dated 1-3-94 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the managemnt of BGML Contractor of TISCO Ltd., Jamadoba, P.O. Jamadoba, Distt., Dhanbad in not regularising/Shri Shiv Kumar Prasad and 63 others is justified ? If not, to what relief they are entitled ?"

2. This is an industrial dispute to decide the action of the management of Bharat Gold Mines Ltd. in not regularising S/Shri Shiv Kumar Prasad and 63 others, whose names find place in the list attached to the order of reference, is justified or not.

3. The brief facts; giving rise to this dispute is that Bharat Gold Mines Ltd. (hereinafter to be referred as BGML) was engaged as Contractor by TISCO at Jamadoba for sinking of Shafts and deepening of No. 6 Pit of 6 & 7 Pits Colliery of M/s. TISCO at Jamadoba by Office Order dated 22-7-1983. Thereafter they got contract from TISCO for the same job of sinking of shafts at 3/4th Pit of Digwadih Colliery. The concerned persons, Shiv Kumar Prasad and 63 others were engaged as temporary workmen in the post of sinkers sometime in the year 1984 and they worked under BGML upto April, 1993. Thereafter the concerned persons have been retrenched with effect from 9-5-93 after payment of retrenchment compensation and wages upto 8-5-93 on the ground that the contract work which was assigned to the company i.e BGML by TISCO was completed and there was no further job of shaft sinking with the management of M/s. BGML.

4. According to the concernd workman the BGML is a Government of India Undertaking and it has got expertised in sinking of shaft and other mining related work. It has got lot of work with B.C.C. Ltd., E.C. Ltd. and other mining companies. According to them the concerned persons were working in permanent job on permanent post and they have put in more than 240 days attendance in each calendar year for the last 8 years, therefore they should be permanently absorbed and regularised as permanent workmen of BGML. But the anti-labour management in order to deprive the concerned persons the benefit of permanent workmen have kept them on the roll of temporary workmen for 8 years and they have been stopped from work from 30th April, 1993 after they have put in about 8 years service. They have gained sufficient experience and has become skilled, therefore, the concerned persons should have been regularised by the management of BGML as permanent workmen. According to them the action of the management in retrenching them is

illegal and unjustified. They raised a dispute before the Conciliation Officer of the Labour Department which ended in failure. The failure report was submitted by the A.L.C. (C), Dhanbad, but the appropriate Government refused to refer the dispute, then the sponsoring union, R.C.M.S. moved the Hon'ble Patna High Court, Ranchi Bench and as per the order of the Hon'ble High Court the present dispute has been referred by the appropriate Government i.e. the Central Government in the Ministry of Labour.

5. The case of the management of BGML, on the other hand, is that the BGML is an Undertaking of Central Government engaged in carrying on contract jobs in different mines as and when same becomes available. The management of BGML secured contract from TISCO Jamadoba Group of Collieries on the job connected with sinking of shafts. At first TISCO awarded contract for sinking vertical shaft in mines of 6 & 7 Pits at Jamadoba by work order dated 22-7-83 for completion of job within 24 months. The management of BGML made arrangement for sinking of shaft in the year 1984, then the sponsoring union, R.C.M.S. demanded for recruitment of local people and threatened to stop the operation of shaft sinking job unless the local people were provided with employment under the management of the contractor, BGML. A meeting was held on 1-2-1984 between the representatives of the management of BGML and the Secretary of the sponsoring union and an agreement was arrived at for temporary employment of local persons on job of shaft sinking with designation sinkers and they will get Category-I wages of NCWA-III and incentive post as per rule of the BGML. It was also agreed that local persons so employed will continue on temporary post and after completion of contract they will be retrenched from service after payment of retrenchment benefit. Thus in terms of aforesaid agreement dated 1-2-1984 the concerned persons were recruited and they were given appointment letters stipulating the terms and conditions of their appointment. It was purely on temporary basis and their services were to be terminated after completion of the contract. It was also stipulated that they would be provided employment as and when job will be available for them and their services will be terminated at any time during the period of temporary employment by giving one month's notice or on payment of one month's wages in lieu of notice. It was also stipulated that such workman shall not be entitled to be appointed in similar job in contract work taken by the management elsewhere than 6 & 7 Pits Colliery of Jamadoba. Each workman gave undertaking to accept retrenchment order after completion of contract work and receive retrenchment benefit without any protest. After completion of contract work of 6 & 7 Pits Colliery at Jamadoba of TISCO the management served retrenchment notice to all such temporary workers. Then such workmen approached the sponsoring union to raise dispute before the A.L.C.(C), Dhanbad and a dispute was sponsored before the A.L.C.(C), Dhanbad on behalf of the concerned workmen demanding for their continuance of employment on some terms and conditions on the job of shaft sinking at No. 3 Pit Jamadoba Colliery which work commenced after the work order dated 8-3-86 issued by TISCO in favour of BGML. The management agreed to accommodate the concerned workmen at No. 3 Jamadoba on same terms and conditions of service. In the meantime TISCO awarded contract for drivage of inclined shafts by work order dated 16-8-90 and 18-12-90 at Digwadih Colliery. Then also the sponsoring union demanded for recruitment of local people adjacent to Digwadih Colliery and threatened to stop the work if the local people is not provided work by the company. Thereafter a settlement was arrived at on 22-4-91 between the management of BGML and the sponsoring union, R.C.M.S. for employment of local persons as temporary mazdoors. The sponsoring union again by letter dated 14-8-91 demanded for engagement of more temporary workers and gave solemaly undertaking that persons should be employed as per the requirement purely on temporary basis till the contract work at Digwadih Colliery is over. The sponsoring union assured that all the aforesaid employment would be temporary nature and no claim would be made in future for making them permanent. Thus, the concerned persons were provided employment purely on temporary basis and were to be retrenched after completion of job at Digwadih Colliery. The job of shaft sinking at No. 3 was over on December, 1991 then the management served notice of retrenchment on workmen working on the job of temporary basis on 16-12-91. The sponsoring union had forced the management to engage 60 local persons in May, 1991 for contract job of Digwadih colliery, besides providing employment 60 temporary workmen working at No. 6 & 7 Pits to be posted at contract job at Digwadih colliery. The sponsoring union also started creating trouble and they served strike notice then the management of BGML was compelled to enter into a settlement dated 6-3-92 with the sponsoring union agreeing not to retrench temporary workmen already working at Digwadih colliery and as well No. 6 Pit of Jamadoba colliery and all the workmen were required to be accommodated at Digwadih colliery although there was no requirement for temporary workers. The management BGML, accommodated all of them till the completion of the contract job at Digwadih colliery. The entire contract job of TISCO was completed by April, 1993 then the management retrenched all the temporary workmen including the concerned workmen by making payment of retrenchment compensation or retrenchment benefits. According to the management of BGML after completion of contract job of TISCO at Jamadoba and Digwadih

colliery the management has got no such work and since such work has been completed and closed, therefore, there was no way out but to retrench all the temporary workmen. According to them the management has got no further such work for engagement of all the concerned persons, therefore, it is not possible for them to engage the workmen on permanent basis and absorb them by regularising their job as permanent workmen. The management has already large number of surplus workers. In such circumstances the management has submitted that its action is justified and the concerned persons are not entitled to any relief.

6. Keeping in view the pleadings of the parties I find that it is admitted that BGML was awarded contract job by TISCO at Jamadoba Group of collieries and Digwadih colliery for vertical and inclined sinking of shaft and during that period the concerned persons were employed as temporary workmen. It is also admitted that the job was awarded as pleaded. But according to the sponsoring union, BGML has got several such work in other collieries like BCCL, ECL and therefore, all the temporary workmen who have been retrenched after April, 1993 should be regularised. But according to the management of BGML, no such work is in their hand and they have got already more than sufficient work force, therefore, they are not in a position to absorb the concerned persons on permanent basis. Further according to them that contract job which was awarded to them has already closed, therefore, if the closure of the work of the establishmnt of BGML at Jamadoba and Digwadih the demand of the concerned persons for regularisation is totally unjustified. The management's plea is that on the basis of demand by R.C.M S., the sponsoring union, and on the threat by the said union not to allow to work on the contract job the concerned persons were accommodated purely on temporary basis.

7. The management has examined one Abbubekar, Dy. Chief Mining Engineer, who has come to support the management's case. He has said that all the works which was provided by TISCO have been completed by 30-4-93. Therefore, the company has retrenched temporary workers giving all benefits under retrenchment as per rules. Such workmen have been paid wages upto 8-5-93 and retrenchment compensation by cheque dated 7-5-93, they were served with three month's notice and have got permission from Central Government for retrenchment of such workmen. The sponsoring union in its written statement has nowhere disputed that they have not got retrenchment benefits. However, when they examined one workman, Mahadeb Lal, he has said that retrenchment compensation was made as per NCWA-IV but at that time they should have got retrenchment compensation as per wages of NCWA-V. But there is no such pleading in the written statement of the sponsoring union, therefore, at the belated stage such statement of WW-1 cannot be taken into consideration because the same is against the pleading of the sponsoring union. The management has filed all the work orders of TISCO which have been marked Ext. M-1, M-4, M-5 and M-6. The management has also filed agreement dated 1-2-84 arrived at by the management and the sponsoring union for temporary employment of local persons on the job of shaft sinking which is Ext. M-2. In Ext. M-2 there is a clear stipulation that such local persons shall be employed purely on temporary basis and after completion of contract, services of the persons retrenched with retrenchment benefits. This record note of meeting held on 1-2-84 has been signed by the Secretary of R.C.M.S. which has sponsored this dispute. Thus, it is clear that the concerned persons were engaged as per settlement between the sponsoring union and the management of BGML purely on temporary basis and they were to be retrenched after completion of the contract job. The management has also filed notice of retrenchment dated 1-4-86 which has been marked Ex. M-3 to show that the management has served retrenchment notice upon the concerned persons on the completion of initial job of shaft sinking. The management has also filed another settlement dated 22-4-91 between the sponsoring union and the management of BGML for employment of local person which has been marked Ext. M-7. In this settlement also the sponsoring union has agreed that local persons will be employed on temporary basis and their services will be terminated after completion of the work. The management has again filed the demand of R.C.M.S. dated 14-8-91 for employment of more number of local persons on temporary basis at Digwadih which has been marked Ext. M-8. The management has filed retrenchment notice dated 16-12-91 served on the temporary workmen of No. 3 Pit and strike notice of same day by the sponsoring union served upon the management for withdrawal of retrenchment. The management has again filed the agreement after the service of the strike notice which is dated 6-3-92 and marked Ext. M-11 by which the management has not retrenched the concerned persons and allowed to work them in another contract work of TISCO. The management has brought on record the application dated 1-2-93 for permission from Central Government for retrenchment of the concerned persons and the permission letter from Central Government for effecting retrenchment of all the workmen who were engaged as temporary sinkers which has been marked Ext. M-12 and M-13. They have also filed particulars of full and final payment of retrenchment and licence issued by the A.L.C.(C) as contractor and Certified Standing Orders of the Company, marked Ext. M-16.

8. Thus, from the materials on record I find that initially the management of BGML was awarded a contract work by work order dated 22-7-87

issued by M|s. TISCO for sinking of vertical shaft and deepening of No. 6 Pit of 6 & 7 Pits Jamadoba colliery. The sponsoring union demanded for employment of local people and there was a settlement on 1-2-84 by which the concerned persons were given temporary employment with conditions that they will be retrenched after completion of the contract work. Subsequently M|s. TISCO issued three more work orders dated 8-3-86, 6-8-90 and 18-12-90 at Digwadih Colliery besides at No 3 Pit of Jamadoba Colliery of M|s. TISCO, and there was demand from the sponsoring union from time to time to accommodate the concerned persons in different contract work which was conceded by the management and in this regard there was settlement dated 22-4-91 and 6-3-92. The management of BGML has clearly stated that the contract work of M|s. TISCO is now over. Thus, I find that the contract work on which the concerned persons were accommodated being the local persons on temporary basis has since been completed and the management of BGML has retrenched all the concerned persons after taking permission from the Central Government and making payment of retrenchment benefits. Therefore, in such circumstances there is now no question of absorbing the concerned persons on permanent basis, therefore, in my opinion the action of the management is perfectly justified and the concerned persons are not at all entitled to be regularised because it is settled principle of law that regularisation by way of permanent absorption in the employment can be made only when there is existing permanent vacancy under the management. But in the present case there is evidence that is such permanent vacancy is existing. On the other hand, MW-1 has clearly stated that the management has got no permanent vacancy, rather, it has got large number of idle work force. Therefore, the concerned persons cannot claim to be absorbed as permanent workmen because they were accommodated at the pressure of the sponsoring union as temporary workmen in a temporary job which has already been completed.

9. In the result I render—

AWARD

That the action of the management is justified and the concerned persons are not entitled to any benefits.

SARJU PRASAD, Presiding Officer

नई दिल्ली, 15 मार्च, 2001

का.आ. 761.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान जिंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय विशाखापट्टनम के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 5-3-2001 को प्राप्त हुआ था।

[सं एल.-43011/2/99-आई.आर. (एम)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 15th March, 2001

S.O. 761.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Vishakapatnam (A.P.) as shown in the Annexure, in the industrial dispute between the employers in relation to the Hindustan Zinc Ltd. and their workmen which was received by the Central Government on the 5-3-2001.

[No. L-43011|2|99-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL CUM LABOUR COURT-VISAKHAPATNAM

PRESENT :

SRI K. VEERAPU NAIDU, B Sc., B L.,

CHAIRMAN & PRESIDING OFFICER.

Dated, 12th day of February, 2001

I.T.I.D (C) No. 3/2000

Reference No. L-43011 2/99|IR(M) dated. 29 02-2000

BETWEEN :

The General Secretary,
O/o Hindustan Zinc Limited,.
Visakhapatnam Zinc Workers Union,
Jukkala Sambamurthy Bhawan,
Visakhapatnam (A.P)-530 026 . Workman.

AND

The Dy. General Manager,
Zinc-Lead Smelter,
Hindustan Zinc Ltd,
Visakhapatnam-530 015 .. Management.

This dispute coming on for final hearing before me in the presence of Sri S. Ramachandra Rao, advocate for workman and Sri D. V. Subba Rao, and Sri M. Venkata Ramana, advocates for management Upon hering the arguments of both sides and on perusing the entire material on record, the court, passed the following :

AWARD

(1) This is a reference made by the Government of India for adjudication of the following dispute under Sec 10(1)(d) and Sec. 2A of the I D. Act.

"Whether the action of the management of M s. Hindustan Zinc Ltd, Zinc-Lead Smelter, Visakhapatnam, in not granting 2 (two) additional increments to Sri N. R. Raghuvender, E No 42573 Sri W. Gopi, E No. 42845, Smt. S Ramulamma E No 442167 and Sri B Jana, E No 42364 w e f 10 10-93, 16-12-93, 10-5-97 and 10-5-97 respectively as demanded by the Visakha Zinc Workers Union, Visakhapatnam is legal and justified ? If not, to what relief the concerned union is entitled ?"

(2) The case of the workman is that the respondent management is a Government of India Enterprises, with its

registered office at Udaipur, State of Rajasthan and it has several units throughout the country including the one at Visakhapatnam. Besides these workmen referred under this reference, some others including G.D.V. Prasadarao, Y. Satyanarayana, P. Ranganath Babu, K.V.S. Somayajulu and V. V. Raju were also employed by the management at Hyderabad unit. The working hours at Visakhapatnam are more than the working hours at Hyderabad union. So also the optional holidays and other holidays at Hyederabad are more than at Visakhapatnam unit. The second Saturday is holiday at Hyderabad unit wherein it is a working day at Visakhapatnam. The city compensatory allowance at Visakhapatnam is lesser than the Hyderabad unit. While so, the management transferred four employees in the year 1997 and one employee in the year 1999 from Hyderabad unit to Visakhapatnam unit and granted two additional increments in order to compansate for long hours of work reduced holidays and stoppage of CCA etc. But the said relief was not granted to the workman whose dispute was referred in this reference when they were transferred from the Hyderabad unit to Visakhapatnam unit in the year 1993. Hence this application.

(3) As against this, it is the case of the management, that it is incorrect to state that the working hours at Visakhapatnam Unit are more and that there are no equal optional holidays for Visakhapatnam unit. However, the management admitted that the second saturday is holiday at Hyderabad whereas it is working day at Visakhapatnam. Further it is pleaded that as per the directions of the appointment of the workers, the workers are required to serve in any part of the country. The transfers were effected due to the winding up of the Hyderabad office and the guest house. The terms of appointment or the company rules do not provide for sanction of two additional increments. Since the office at Hyderabad is being wound up and on account of humanitarian grounds and to accommodate to these workers they were transferred to Visakhapatnam from Hyderabad unit without disputing of any emoluments and by providing the transfer benefits like TA, Disturbance allowance, Transport charges for personal goods on their transfer to Visakhapatnam Hence there is no substance made in the claim made by the workmen in this reference.

(4) Before this Tribunal one of the 4 workmen was examined as WW1 and got marked exs. W1 to W3, the transfer orders. On behalf of the management one witness is examined as WW1 and Ex M1 is marked.

(5) Heard both sides.

(6) The point that arises for consideration in this case is as follows :

> "Whether the four workmen in this reference are entitled to get the two additional increments and other benefits as were given to five employees who were earlier transferred from Hyderabad Unit to Visakhapatnam unit ? And to what relief the workmen are entitled ?"

(7) The following facts are not in dispute. The management's registered office is at Udaipur and it has got units at Hyderabad and Visakhapatnam and some other places throughout the country and that the petitioners are the workmen of the respondent management and that they were transfered in the year 1993 from Hyderabad unit to Visakhapatnam unit because of the winding up of the unit and guest house at Hyderabad. Ex. W2 is the transfer order of this WW1 one of the persons whose dispute is referred to this Tribunal. As per that Ex. W1 order four employees were transferad from Hyderabad unit to Visakhapatnam unit on 30th June, 1987 by the respondent management wherein it is also mentioned that it has decided to grant them two additional increments so as to compensate for long hours of work reduced holidays, stoppage of CCA etc. But the said benefits were not incorporated in the transfer orders of WW1 Thus the grievance of the workmen is that the benefits that were granted to the employees transferad under Ex. W1 were not extended to the four workmen whose dispute is referred in this reference.

(8) Admittedly, the management have examined its Senior Manager (P&A), who is working since 1996. He deposed that since there were union talks in the year 1980 the two additional increments were given as per Ex. W1 and subsequently there were no such union talks and the two additional increments were not given under Ex. W2. Even in the cross-examination also he admitted that the four employees that were transferred under Ex. W1 were granted two additional increments and there was no fault on the part of the workmen to get the two additional increments while they were transfered under Ex. W2. He also stated that he cannot say whether it is the lapse on the part of the union and a suggestion is put to this witness that the transfers under Ex. W1 are not on account of the closure of eastern division of Hyderabad. Further he also admitted that the working hours at Hyderabad unit are from 9.30 a.m. to 5.00 p.m. and at Vizag it is 8.50 a.m. to 5.30 p.m. i.e. one hour more at Vizag. He also admitted that Second Saturday is holiday at Hyderabad whereas it is working day at Vizag and Optional Holidays at Hyderabad area and at Vizag there are two only and paid holidays including national holidays at Hyderabad are 10 and whereas at Visag there are 8 only and CCA at Hyderabad is Rs. 150 and at Vizag it was Rs. 75/- only. Therefore, the workman has got justification to ask the same benefits which were given to the employees who were transfered under Ex. W1.

(9) The learned counsel appearing for the management contends that the transfer effected to there workmen is only on account of the closure of the Hyderabad Divisional Office and the guest house and therefore the workmen cannot demand any benefits like two additional increments. This contention has no force because the closure of the divisional office at Hyderabad have taken place even in the year 1987 as per Ex. M1 when the four employees were transfered then and those four employees were given two additional increments as per Ex. W1. Therefore, there is no substance in the submission made by the learned counsel appearing for the management. The granting of two additional increments as per Ex. W1 to the employees who transfered from Hyderabad to Visakhapatnam unit is only to compensate for long hours of work, reduced holidays, stoppage of CCA etc. and the said reason was also mentioned in Ex. W1. Therefore, the same benefit is to be extended to the workmen under the reference and they cannot be denied of such benefit unless and until otherwise they are being deprived of. Therefore, I answer the point as well as the reference in favour of the workmen and against the management.

(10) In the result, the award is passed directing the respondent/management to grant two additional increments as demanded by the four workmen Sri N. R. Raghuvender, Sri V. Gopi, Smt. S. Ramulamma, and Sri D. Jana. However, there is no order as to costs and each party is directed to bear its own costs. Dictated to steno transcribed by her given under my hand and seal of the court this the 12th day of February, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE IN ITID(C) 3/2000

WITNESSES EXAMINED :

FOR WORKMAN :	FOR MANAGEMENT :
WW1 : V. Gopi	MW1 : P.V.R. Prasad

DOCUMENTS MARKED :

FOR WORKMAN :

Ex. W1 : 30-06-87 : Transfer order.

Ex. W2 : 16-12-93 : Transfer order of Gopi V.

Ex. W3 : 10-5-97 : Transfer order of D Jana, and Smt. S. Ramulamma.

FOR MANAGEMENT :

Ex. M1 : 10-6-87 : Letter of management reg. shifting of workmen from Hyderabad unit to Vizag unit.

नई दिल्ली, 15 मार्च, 2001

का. आ. 762.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विशाखापट्टनम पोर्ट ट्रस्ट के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय विशाखापट्टनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-2-2001 को प्राप्त हुआ था ।

[सं. एल-34011/4/2000-आई आर (विविध)]
बी. एम. डेविड, अवर सचिव

New Delhi, the 15th March, 2001

S.O. 762.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Visakhaaptnam (A.P.) as shown in the Annexure, in the industrial dispute between the employers in relation to the Visakhapatnam Port Trust and their workmen which was received by the Central Government on the 27-2-2001.

[No. L-34011/4/2000/IR(M)]
B. M. DAVID, Under Secy.

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL CUM LABOBUR COURT: VISAKHAPATNAM

PRESENT :

Sri K. Veerapu Naidu, B.Sc., B.L.,
Chairman, Industrial Tribunal &
Presiding Officer, Labour Court,
Visakhapatnam.

I.T.I.D. No .(C) 28/2000

Dated, 31st day of January, 2001

No. L-34011/4/2000/IR(M) Government of India Ministry of Labour New Delhi dated 31-7-2000

BETWEEN

The General Secretary,
Visakhapatnam Port Shramika Panchayat,
21-44-21 A Chegalpete,
Visakhapatnam. .. Workman

AND

The Chairman,
Visakhapatnam Port Trust,
Visakhapatnam. .. Management.

This dispute coming on for hearing before me in the presence of Workman and Management Memo filed by the workman union And upon perusing the material papers on record the court passed the following :

AWARD

Memo filed stating that the matter is settled out of Court. Hence the reference is closed and Nil Award is passed. No costs awarded.

Given under my hand and seal of the Court this the 31st day of January, 2001.

K. VEERAPU NAIDU, Chairman
Industrial Tribunal &
Presiding Officer, Labour Court

1032 GI/2001—5

नई दिल्ली, 15 मार्च, 2001

का. आ. 763.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई. जी. आई. एअरपोर्ट के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-3-2001 को प्राप्त हुआ था ।

[सं. एल-11011/2/97-आई आर (एम)]
बी. एम. डेविड, अवर सचिव

New Delhi, the 15th March, 2001

S.O. 763.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of I.G.I. Airport and their workman which was received by the Central Government on the 5-3-2001.

[No. L-11011/2/97/IR(M)]
B. M. DAVID, Under Secy.

ANNEXURE

BEFORE SHRI K. S. SRIVASTAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 112/97

In the matter of dispute between :
The President,
I.A.A. Employees Union,
B1/2, I.A.A. Staff Colony,
Mahipalpur, New Delhi.

Versus

The Senior Manager,
I.G.I. Airport,
Airport Authority of India (IAD),
New Delhi-37.

APPEARANCES :

None for the workmen
Shri Feroz Ahmed AR for the Management

AWARD

An industrial dispute was raised by the employees union (hereinafter referred to as workmen) of International Airport Authority of India, New Delhi, I.G.I. Airport including Delhi against the Airport Authority of India (IAD) I.G.I. Airport, New Delhi (hereinafter referred to as Management) against the management's action for engaging contract labour for sale of entry tickets of visitors lounge in I.G.I. Airport Terminal-II, New Delhi. Consequently the Central Government in the Ministry of Labour vide its Order No. L-11011/2/97-IR(M) dated 30-7-97 has send this reference under Section 10(1)(d) and 10(2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) for the adjudication of the Industrial dispute on the following terms :—

> "Whether the action of the management of Airport Authority of India in engaging contract Labour for sale of entry ticket for visitors lounge in I.G.I. Airport Terminal-II, New Delhi, is justified If not, what directions are necessary in the matter ?"

2. The workmen case in short is that as per Section 12(3)(j) of Airport Authority of India Act, 1994 (AAI Act) "regulating and control of plying of vehicles and entry and exit of passengers and visitors in the Airports and Civil enclaves,

with due regard to the security and protocol function, of Government of India was one of the main functions of the management and it was of perinial nature. Thus the sale of entry ticket at I.G.I. Airport, New Delhi including visitors lounge at Terminal II according to the workman was amounting to the perennial nature of work in the Industry, the said work was ordinarily handled by the regular workmen of the management since the inception of I.A.A.I. 1972. Ministry of Finance had also issued letter No. 15/10/84/GM its copy Annexure 'A' annexed to the statement of clai malso provided that jobs which were of permanent nature shou'd not be given on contract basis and Model Standing Orders in this respect were also issued by the Ministry of Labour. Further Section 10(2)(b) and (c) of Contract Labour (Regulation and Abolition) Act, 1970 also provided employment of contract labour.

3. It is stated by the workman that the work of regulating entry and exit of passengers and visitors at visitors lounge at Terminal II, I.G.I. Airport, New Delhi was being performed on a contract basis the contract of which has been given by the management to M/s. Karnataka Industrial and Commercial Corporation on 28-8-96. The said contract according to the workman was initially given for a period of six months @ Rs. 6 Lakhs per month as per N.I.T. conditions. It is further stated by the workman that the said monthly rent of Rs. 6 lakhs was subsequently reduced by the management to the extent of Rs. 2 lakhs per month in violation of the N.I.T. Conditions. In view of the fact that the monthly rent was reduced to two lakhs by the management. The said Contractor could not be said to be the highest bidder for the said job which was pre condition of N.I.T. The workman has again stated that the management had reduced the said rent with an implied motive to give undue favour to the party on kuld pro quo basis by circumventing N.I.T. conditions. The said work has now also been extended for two years on the same amount of monthly rent. The workman has further stated that practice of contract labour for the performance of the aforesaid job taken by the management is only with intention to get the contract employees absorbed in the regular service of the management from the back door and to exclude regular employees of the management without adequate work and without proper prospect of their career development. It is maintained by the workman that if the work aforesaid would be entrusted to the regular employees the next sale of entry tickets would increase to great extent than projected by the contract and there would be sufficient income to the management without any extra expenditure.

4. The workman has stated that the management have given the contract aforesaid of M/s. Karnataka Industrial and Development Corporation on 28-8-96 during the pendency of the conciliation proceeding which amounts in violation of the Act and the management had made itself liable for prosecution. On these facts the workman have prayed for a direction to the management to rescind the said contract immediately to avoid infuctions in its expenditure on contract labour and liability for their absorption in the regular service and leakage at the cost of public issue employees.

5. The Management has contested the workman's case, and it is asserted that it was prerogative of the management to run the business after taking all factors into consideration and no employee and union has a right to interfere in its smooth running and the workman's claim deserves to be summarily rejected.

6. At the first stage the management has taken preliminary objection to the following effects.

7. The reference as it is bad and illegal being without application of mind and has been made in mechanical arbitraty manner. Secondly that the statement of claim of the workman is bad and illegal being not in consonance with provisions of section 2-K of the Act. Thirdly that (Regulation and Abolition) of contract labour falls under the purview of contract labour (Regulation and Abolition) Act, 1970 and thus it was for the appropriate government to decide abolition of contract labour is the Central Government through advisory board and thus no industrial dispute could be said to be in existence. Fourthly no valid demand notice was served on the management by the workman before filing the case with the conciliation officer and it makes the reference bad and illegal. Fifthly that the statement of claim of the workmen is not maintainable in view of the notification dated 2-3-93 detailed in para 1(C) of the written statement.

8. On merits the management has denied that the sale of entry tickets was of perinial nature of work as admitted by the workmen. It is asserted by the management in this respect that job of managing the visitors lounge is not of perinial nature because at regular intervals bank of entry of visitors was imposed by the Bureau of Civil Aviation Security (BCAS) and sometimes the said ban was of very long duration and have been for indefinite period and thus deployed full time employees in managing visitors longe would not be economically viable. It is again asserted by the management in this respect that on the merger of I.A.D. and N.A.D. into A.A.I. there was every likelihood of surplus manpower and they could be re-deployed and thus the appointment of regular employees could aggravate the situation of surplus manpower. It is further asserted by the management that visitors longe at Terminal II I.G.I. Airport providing facilities to visitors who used to come to see of and receive passengers was separately constructed at cost of crores of rupees and all the facilities of centrally air-conditioned were provided there for the visitors. Since the said building was only constructed cecently so policy decision was taken by the management for regulation of visitors into the building by private Agency because the work was not of perinial nature. The Management has denied for violating any provision of Industrial Dispute for awarding contract to the private agencies.

9. It is again asserted by the management that the visitors longe was given job contract purely on experimental basis to find out economic viability and other practical problems pertaining to the visitors and there was one of the condition of the job contract that it could be prevented by giving notice of 60 days without assigning any reason and thus based on tender licence was initially awarded for a period of six months w.e.f. 28-8-96 to 27-2-97 on monthly licence fee of Rs. 6 lakh on experimental basis to M/s. Karnatka Industrial and Development Corporation as per conditions of N.I.T.

10. It is again asserted by the management that it was felt that the contractor had suffered losses for which a notice dated 7-9-96 was given by the contractor for surrendering the above contract. Hence after negotiations the licence fee was reduced from Rs. 6 lakh to Rs. 2 lakh p.m. w.e.f. 7-10-96 by the Management and the contractor was informed accordingly. The contractors requested for extension of contract was from 27-2-96 also considered and the contract was extended for further one year and six months w.e.f. 28-2-97 on re fixed licence fee of Rs. 2 lakhs per month.

11. It is further alleged by the management that at other domestic and international Airport such as Bangalore, Thiruvanathpuram, Ahmedabad etc. The job of the management of visitors longe was being done on job contract basis.

12. The Management has denied that contract work was awarded to get contract employees absorbed in regular service of AIR through back door entry. Said contract according to the management was for a fixed period from 1-3-97 to 12-9-98 and in no manner it would affect adversly to the regular employees.

13. In the rejoinder the workman has reiterated his allegations made in the statement of claim.

14. It appears that vide order dated 22-12-2000 workmen were directed to be proceeded exparte.

15. Only on behalf of the management the evidence has been led and affidavit of Shri Ram Kishan, Asstt. Commercial Manager, Indira Gandhi International Airport, New Delhi has been filed. Shri Ram Kishan has also examined himself on oath and has proved his affidavit marked Ex. MW1/1. He could not be cross-examined by the workman.

16. Arguments on behalf of the management's could only be heard.

17. After having considered the entire facts and circumstances of the case and the arguments of the management I agree with the management's contention that the workman has failed to establish his case by any reliable proof.

18. Undoubtedly point in issue mainly is whether the job of selling entry ticket at I.G.I. Airport, New Delhi at Terminal No. II is of a perinial nature of work and it could not be performed on contract basis by private agency.

19. The Onus of establishing the fact that the job of selling ticket is of perinial nature and it can be performed only by the regular employee of the management and not on a contract basis is purely on the workman. No cogent material hsa been given by the workman in support of their case. No affidavit etc. has been filed by the workman and the workman has allowed the case to go exparte against him. When on behalf of the management affidavit of Shri Ram Kishan has been filed. He has examined himself on oath also. In the affidavit the workman's case is denied by Ram Kishan and he has supported the case of the management. His assertion made in that affidavit goes uncontroverted. There is nothing in his evidence to disbelieve him. His evidence is accepted as truthful. The workman's case thus is not found satisfactory and in the absence of any proof the contention of the workman made in the claim petition cannot be accepted.

20. The workman's further case of violation of the provisions of the Act by the Management by awarding contract to private agency during the conciliation proceedings I find is also devoid of merit. The wrokman has not given any detail of the provisions of the Act which can be said to be violative by the management. The said objection taken in a routine manner I find cannot be accepted.

21. As regards the management's preliminary objection in view of the fact that the workman's case itself has been found unsatisfactroy I do not feel it necessary to enter into discussions of the preliminary objections of the Management against the legality and maintenability of the reference. In view of the matter the term of reference is answered in affirmative and the workmen are not entitled to get any relief. Award is given accordingly.

K. S. SRIVASTAV, Presiding Officer

February 28, 2001.

नई दिल्ली, 15 मार्च, 2001

का. आ. 764.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओ. एन. जी. सी. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसाम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-3-2001 को प्राप्त हुआ था ।

[सं. एल-30011/16/99-आई आर (विविध)]
बी. एम. डेविड, अवर सचिव

New Delhi, the 15th March, 2001

S.O. 764.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Gowahati as shown in the Annexure, in the industrial dispute between the employers in relation to the ONGC and their workmen which was received by the Central Government on 13-3-2001.

[No. L-30011/16/99-IR(M)]
B. M. DAVID, Under Secy.

ANNEXURE

GOVERNMENT OF ASSAM
IN THE INDUSTRIAL TRIBUNAL : GUWAHATI : ASSAM

Reference No. 21(c) of 1999, 31(c)/99, 10(c) 2000

PRESENT :
Shri K. Sarma, LL.B.,
Presiding Officer,
Industrial Tribunal,
Guwahati.

In the matter of an Industrial Dispute :

BETWEEN

The Management of The Regional Director, O.N.G.C., Nazira, Sibsagar.

Versus

Their workmen rep. by ONGC Contractual Mazdoor Sangha, Lakwa, Sibsagar.

Date of Award : 03-12-2000

AWARD

The Government of India, Ministry of Labour, vide Order No. L-30011/16/99-IR(M) dt. 14-06-1999 has made this reference to this tribunal U/s 10 of I.D. Act, to adjudicate the industrial dispute arising between the management of Oil and Natural Gas Corporation, in short O.N.G.C. and its workmen represented by O.N.G.C. Contractual Mazdoor Sangha, Lakwa, Sibsagar, Assam out of non regularisation of the services of the 69 Contingent workers working in said project for a long period of time. The referring authority has framed the following issue to adjudicate the dispute between the parties :—

"Whether the claim of ONGC Contractual Mazdoor Sangha Lakwa regarding regularisation of services of their members (who are working as contractual workers) in ONGC Ltd. at Lakwa is justified ? If so, to what relief the workmen are entitled?"

On receipt of the reference, this tribunal has registered this case and issued notices to both the parties calling upon them to file their written statements/Addl. written statements and documents in support of their respective claim, in response which, both the parties have filed their written statement/ addl. written statements and also documents. Both the parties have adduced oral evidence in support of their respective claim, thereafter, on completion of oral evidence, arguments advanced by the learned advocates for the both the parties are heard at length. Apart from that both the parties have submitted written arguments in support of their claim.

The workmen case, in brief, is that all together 69 workmen have been working in the Lakwa Project of O.N.G.C. since it inception as contingent workmen. Lakwa Project was established by the management of O.N.G.C. in the year 1992 for the purpose of drilling and exploitation of natural hydrocarbons from the earth. The gas which emanates out of the well, is sent through pipe line and certain pressure has to be maintained for the purpose of safety and smooth running of the said hydrocarbon or any oher natural gas. In terms of the said project, low pressure gas compressor station are set up for the aforesaid purpose. The workmen engaged there are entrusted with some costly equipments to run the said compressor stations. This method of working is costly, effective and also scientific. The management has contended in their written statement that as the entire job is not perinial in nature, as such, job is assigned to the contractor for a specified period. With this object in view, the management, O.N.G.C. has entered into agreement with the competent experienced contractors, who in turn engage their own labourers and in turn the O.N.G.C. is to pay the contractual amount to the contractor and the contractor has to maintain everything out of that agreed amount. The contractor will have to determine the numbers of labourers required for the job and all the legal obligation arising out of hiring such labourers are to be fulfilled by the contractor himself in terms of the said agreement. The management has contended that they have not engaged permanent labours because, the life of said well(s) of emanating the natural gas is unpredictable and may exhaust at any time rendering entire project dryes resulting authomatic termination of the project. Because of aforesaid reasons, the workers raised this Industrial dispute have been engaged through contractor having licence under the Contract Labour (Regulation and Abolition) Act, 1970 and they are working under direct control and supervision of contractor engaging them without having any relation with the principal employer, O.N.G.C. As the workers raising the industrial dispute are contractual labour, through all purpose, they have no direct relationship with principal employees and hence workers can not raise this incustrial dispute without seeking declaration from the Central Government under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 that

they are not contract labour and are direct employees of the principal employer. As no such declaration is obtained by contract labour from the aforesaid authority, they can not approach this tribunal seeking any relief and as such dispute raised by them beyond the adjudicatory power of this tribunal. In view of this, this reference made by the appropriate Government is incompetent in the eyes of law and can not be adjudicated by this tribunal. It is also contended in their written statements that in framing the issue the Central Government has not applied its mind because without any direct relationship between employer and employee industrial dispute can not exist.

The workmen, on the otherhand, contended in their written statement that they are not contractual workers but contingent workmen under the direct control and supervision of management who has engaged them in the year 1992 to do the works of Gas Compressor Operator, Oil Tanker Handyman, Typist, Khalasi for upkeeping job, Helper, Artificial Lift Men, Operator of WIP, Operator of G.I.P. etc. some of which are technical in nature. And all of them have been engaged by the management in the year 1992 and since than they have been working there till now completing more than 240 days in every year. It is further contended that all the workmen involved in this dispute were engaged to do the works in various section either in general or shift duty working under the supervision, control and order of the management, O.N.G.C. They are transferred from one place to another under the order of the O.N.G.C. officer and are paid by the O.N.G.C. and they forming the Sangha under the name and style 'O.N.G.C. Contractual Mazdoor Sangha', Lakwa, Sibsagar, Assam are working for the O.N.G.C. extracting and helping in extraction of Oil and Natural Gas for the business of the O.N.G.C. At no point of time, they have been engaged through contractor as contractor has nothing to do in their works. As the O.N.G.C. has economic control over their subsistance, skill and continued employment they cannot be termed as contractual workers. The management has refused to regularise their service and also to pay the equal wages with those of doing same type of works with them, in spite of repeat demand and requests from their side Twenty two workers working in said project have approached the Industrial Tribunal at Dibrugarh through Misc. Case No. 8/96 for unfair labour practice and said tribunal vide order dated 15-10-96 directed the management to maintain statusque and being aggrieved by aforesaid order the management has approached the Hon'ble Gauhati High Court vide C.R. No. 5947/96 which was disposed by the Hon'ble High Court vide order dated 27-4-98 directing the contending parts to raise the dispute before the competent authority and said order being unchallenged by the management remained as it is, The workmen thereafter raised the dispute before the concerned labour authority who tried to settle the matter amicably by holding conciliation proceeding between the parties, but having failed to settle the matter, it was referred to the appropriate Government who has ultimately made this reference to this tribunal.

In course of arguments, learned advocate for the management has contended that the order of reference itself is bad in law and no industrial dispute has existing between the parties for reference under section 10 of I.D. Act as the workmen raising this dispute being contractual workers cannot raise the dispute without seeking declaration from the appropriate Government under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. They are not contract labour and are direct employees of the management. It is further argued that the workmen are contract labour is evidenced from the fact that appropriate Government has already mentioned in the order of reference that workmen are contractual worker. He has reliede his submission in Air India Statutory Corporation V. United Labour Union AIR 1997 SC P. 645. The relevan para is as follows :

"The Award proceedings as suggested in Gujarat Electricity Board Case (1995 AIR SCW 2942) are be set with several incongruities and obstacles in the way of the contract labour for immediate absorption. Since, the contract labour gets into the service of the principal employer, the Union of the existing employees may not espouse their cause for reference under section 10 of the I.D. Act. The workmen, who on abolition of contract labour system have no right to seek reference under section 10 of I.D. Act. Moreover, the workmen immediately are kept out of job to endlessly keep waiting for award and thereafter resulting in further litigation and delay in enforcement. The management would always keep them it bay for absorption. It would be difficult for them to work out their right. Moreover, it is a tardy and time-consuming process and years would roll by Without wages, they cannot keep fighting the litigation endlessly. The right and remedy would be a teasing illusion and would be rendered otiose and practically compelling the workman at the mercy of the principal employer. Considered from this pragmatic perspective, with due respect to the learned judges, the remedy carved out in Gujrat Electricity Board case (1995 AIR SCW 2942) would be unsatisfactory. The short coming were brought to the attention of this Court. So, that part of the direction in Gujrat Electricity Board case is not, with due respect to the Bench, correct in law. The Dena Nath's case (1991 AIR SCW 3026), as held earlier, I as not correctly laid down the law. Therefore, it stands overruled Moreover, the Bombay High Court has correctly held that the High Court under Atricle 226 of the Constitution would direct the principal employer to absorb the contract labour, after its abolition, even though some of the contractors have violated Section 12 of the Act and the appellants have violated section 7 of the Act".

He has again relied his submission in Gujrat Electricity Board Ukai V. Hind Mazdoor Sabha, AIR 1995 SC p 1908 para 11 runs as follows :

"These decision in unambinuous terms lay down that after the coming into operation of the Act, the authority to abolish the contract labour is vested exclusively in the appropriate Government which has to take its decision in the matter in accordance with the provisions of Section 10 of the Act. This conclusion has been arrived at in these decisions on the interpretation of section 10 of the Act. However, it has to be remembered that the authority to abolish the contract labour under section 10 of the Act comes into play only where there exists a genuine contract. In other words, if there is no genuine contract and the so called contract is sham or a camouflage to hide the reality, the said provisions are inapplicable".

Relling upon aforesaid decisions learned counsel for the management has argued that as the contract labour system has not been abolisioned by the appropriate Governemnt by issuing notification under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, jurisdiction of tribunal is bored and remedy for the workmen lies before the appropriate Government and not before this tribunal The fact that the workmen involved in this dispute are industrial at labour is established from the order reference where it has been pacifically mentioned that the workmen are contractual workmen.

Learned advocate for the workmen has, on the otherhand, rebuted this point by submitting that mere mentioning in the order of reference that workmen are contractual workers is not enough to hold by the tribunal that workmen are contractual workmen. This is because at time of making the order of reference, there was no materials before the referring authority as to status of the workers. The order of reference is made by appropriate Government on the basis of the contention raised by the party without holding any enquiry to that effect and without considering any materials This being so, the order of reference is nothing but an administrative order which has to be enquired into by the Tribunal by recording evidence and considering the materials placed before it In this connection, he has drawn my attention to Telco Convoy Drivers Mazdoor Sangh V. State of Bihar and anothers AIR 1989 SC P 1565 the relevant para is as follows :

"While exercising power under S. 10(1), the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government can met delve into the merits of the dispute and take upon itself the determination of the list, which would certainly be in excuted of the power conferred on it by S. 10. It is true that in considering the question of making a reference under S. 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended". But the formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. Where, as in the instant case, the dispute was whether the persons raising the dispute are workmen or not, the same can not be decided

by the Government in exercise of its administrative function under S. 10(1) of the Act. The order of the Govt., refusing to refer the dispute on ground that the persons raising the dispute are not workmen is liable to be set aside. As the Govt. had persistently declined to make a reference under S. 10(1), the Supreme Court directed the Govt. to make a reference".

In view of aforesaid position of law settled by the Apex Court. I am of opinion that mere mention in the order of reference that workers are contractual workers without considering any materials and without having any materials before the authority at the time framing the issue can not enable this tribunal to hold that workmen are contractual workers without considering the materials available before us at the time of enquiry. Another point raised by the management that order of reference is bad in law and not be entertained is not tenable. This is because the workers raising this dispute is a workman within the meaning of Sec. 2(S) of the I.D. Act. They have every right to raise te industrial dispute before the competent authority to meet their grievances. Learned counsel for the management on the other hand. has contended that alleged dispute between the workmen and management is not an Industrial Dispute because there is no direct relationship between employer and employee because of contractual natural of work. As this the main point to be decided in this reference, detail discussion to that effect is made herein below. But for the aforesaid reason, I hold that dispute between workmen and management is a genuine one and they are workmen within the meaning of Section 2(S) of the I.D. Act and as such present dispute is maintainable.

The moot point to be decided in the reference is whether the workmen involved in this case are direct employees of the management or contractual workers having been engaged through contractor. This point has to be decided considering entire fact and circumstances of the case and the materials available record and the point of law referred to by learned advocates' for the both the parties Although learned advocate for the management and made his submission on the basis of the order of reference where it was mentioned the word contractual worker, but this citation is not enough to hold that workers are contractual one. In this connection, decision is already referred to herein above The learned advocate for the management has submitted that there are two types of contract, one is genuine and another i ungenuine on sharm or comouflaging If the contract is genuine one, reference is baried by Sec 10 of Contract Labour (Regulation and Abolition) Act, 1970 which is already discussed herein above. To be a genuine contract, both the principal employer and the contractor must have license from the competent authority under the provision of Contract Labour (Regulation and Abolition Act) 1970 for the purpose of engaging workers The management has submitted that the ext. 'C' the license issued to M|s Lakhi Enterprise is the contractor, supplying labour and ext. 'E' series are the agreement entered into between the management and the contractor for the purpose of supplying contract labour. But curiously enough the management has not submitted any license issued to them empowering them to engage labour through contractor Moreover, from the ext. 'C' licence issued to M|s. Lakhi Enterprise, it can not be held that said contractor has engaged the present workmen in the Lakwa Project without any evidence to that effect The management has not examined any witness from the side of M|s Lakhi Enterprise or any person in charge of engaging contract labours nor any other reliable evidence is placed before the tribunal for the purpose of determining the fact that said contractor has engaged the present workmen Moreover, In the evidence of the M Ws. It is no where stated that said M|s. Lakhi Enterprise is the contractor engaging workmen. The workmen on the otherhand has flatly denied there engagement by any contractor. As the workmen has denied the fact of being contract labour, it is bounded duty on the part of the management to prove this fact. As no witness from the side of the contractor has been adduced to prove this fact, nor any license issued to the management empowering them to engage the contract labour have been placed before the tribunal, under such circumstances, I find it difficult to hold that the workmen engaged by the management is contract labour Moreover, from Ext. 7, 2, 3 and 4, issued by the officer of the management to workmen Islam Hussain, Gunesiyan Pargahi and Bijen Khetropal, etc it is established that those workmen have been working as contingent labour since 1992 to 1999. But M.W.2 has admitted in his deposition that ext. 2, 3 and 4 are issued by him at the request of the workmen, but has stated that he has no authority to issue ext. 2, 3 and 4. But, if he has no authority to issue those documents, he is liable to be penalised by their authority for doing an work without authority. But because of these, the fact sought to be proved by the workmen that they were working under management since 1992 cannot be disbelieved.

Although the workmen has been termed as 'contingent' workmen in ext. 2, 3 and 4, but as per circular issued by the management stating guideline for regularisation of the workmen, the term 'contingent workmen' has not been mentioned there. This term has perhaps been assigned to the workmen because they were mainly engaged for Lokwa Project. But as per circular submitted by the workmen, there are two type of workers i.e. a temporary workmen and regular employee. The workmen who has put minimum 180 days of attendance in any period of twelve consequitive month shall be temporary workmen provided that a temporary workmen who has put in not less than 240 days in a year within minimum qualification prescribed by the commission may be considered for conversion as regular employees. In the instant case from the evidence of the workmen and also ext. 2, 3 and 4 and other materials on record, it is established that all the workmen have completed 7 to 8 years of service with minimum 180 days in a year for the purpose of obtaining status of temporary workmen and also with minimum of 240 days in a year qualifying themselves for conversion into regular workmen. In view of this all the workmen in this case are temporary workmen qualifying them for conversion into the regular workmen

So for as the nature of work done by the workmen is concerned, I find from the materials on record that some of them are working as Gas Compressor Operator, Oil Tanker Handyman Typist, Khalasi for upkeeping job, Helper, Artificial Lift Men, Operator of WIP, Operator of G.I.P. etc, which are of perenisal in nature. It appears that works done by some of the workmen are highly technical in nature which requires scientific qualification experience etc. and equipments operated by the workmen habe been supplied by the management and are supervised by their technical expert, Moreover, the evidence on records has established that the works done by them are perenisal in nature requiring high skill and energy. This being so, I do not find anything to held that 'so called' contractors have anything to do with the works of the workmen. All the workmen have been performing their duty for the purpose of improving the business of the O.N.G.C. and profit anything earned by them by virtue of labour goes to the pocket of the O.N.G.C. and hence for all purpose, they can be considered as workmen of the management. It is also established from the evidence of the management that Lakwa Project is still going on with slightest decrease of productivity. But there is a small township with some residential quarter of workmen and also a Central School for schooling their Children. This site of establishment has proved that the project is a permanent one and there is no likelihood of closing down the same. It has been laid down by the Apex Court in Hussain Bhai, Calcutta Vs. The Alath Factory Thezhilali Union, Kozhikode and others (1978) 4 SCC. P. 257 as follows :

"The facts found are that the work done by the workmen as an integral part of the industry concerned, that the raw materials was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade The workmen were broadly under the control of the management and defective articles were directed to be rectified by the management. This contention of circumstances is conclusive that the workmen were the workmn of the petitioner."

The true test is where a worker or group of workers labour to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer He has economic control over the workers' subsistence, skill and continued employment If he for any reason choles off, the worker is virtually laid off The presence of intermediate

contractors with whom alone the workers have immediate or direct relationship ex contracts is of no consequence, when, on lifting the veil or looking at the conspectus of factors governing employment, the naked truth is discerned, and especially since it is one of the myriad devices resorted to by managements to avoid the responsibility when labour legislation casts welfare obligation on the real employer based on Arts, 38, 32, 42, 43 and 43A If livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of enterprise, the absence of direct relationship or the presence of dubious intermediaries cannot snap the real life-bond. If, however, there is total dissociation, in fact, between the disowing management and the aggrieved workmen, the employer is in substance and in real life-terms, by another."

In Secy., Haryana Electricity Board Vs. Suresh and other, AIR 1999 SC. p. 1161 Appex Court has held as follows:

"(E) Contract Labour (Regulation and Abolition) Act (37 of 1970), S. 10-Contract Labour-Absorption in service-Electricity Board—Work of keeping plants and station clean and hygenic awarded to contractor—work not of seasonal nature—Contract itself stipulating number of employees to be engaged by Contractor-Overall control of workings of contractor labour including administrative control remaining with the Board—Board neither registered as principal employer nor contractor was licensed contractor—Contract system was thus a mere comouflage which could be easily pierced and employer employee relationship between Board and employee easily visualised—Employees who have worked for more than 240 days cannot therefore be denied absorption." In Gujrat State Electricity Board, Ukai Vs. Hind Mazdoor Sangh, AIR 1995 SC. p. 1914 the Appex Court, regarding contract labour has been laid down as follows:

"If the workmen of the so called contractor allege that in fact the contract is sham and they are in fact the workmen of the principal employer, they may raise the dispute themselves not for abolition of the contract labour system, but for making available to them the appropriate service conditions. When such dispute is raised, it is not for abolition of the contract labour, but for a declaration that the workmen concerned are in fact the employees of the principal employer, and for consequential reliefs on such declaration. If, however, the contract is genuine, the direct workmen of the principal employer may espouse the industrial dispute for abolition of the contract labour system and for absorption of the contractor's workmen as the direct workmen of the principal employer. When such dispute is raised by the direct workmen of the principal employer, the industrial adjudicator can entertain the reference, but in viw of the provisions of Section 10 of the Act. He will have first to direct the workmen to approach the appropriate Government for considering the question as to whether the contract labour in question should or should not be abolished under the said prvisions. If, on such reference being made by the workmen, the appropriate Government does not abolish the contract labour, the industrial adjudicator has to reject the reference since the jurisdiction to abolish the contract is exclusively vested in the appropriate Government and he has no jurisdiction to adjudicate the dispute. However, if the appropriate Government abolishes the contract labour, the industrial adjudicator can proceed to decide (i) as to whether the erstwhile contract labour should be absorbed in the principal establishment; (ii) if so, to what extent and (iii) on what terms. The decision on the points will have to be given by him by giving opportunity to the parties to lead the necessary evidence."

The management has brought to my notice an unreported judgement passed by the Hon'ble High Court of Allahabad in Civil Writ Petition No. 23550 of 1987 filed by O.N.G.C. Karmachari Union ext against their management In said case the Hon'ble Court relying open the point of law laid down in State oof Haryana and others Vs. Piara Singh and other in case that the State Govt. has formulated a scheme for regulrisation of casual workmen the workers union is not entitled to any relief in this writ petition and accordingly this petition stands dismissed. But fact of the instant case is difference. There is no materials on record that the concerned authority or the appropriate Govt. has formulated any scheme for regularisation of the workers involved in this case. In view of this I do not find that decision given by the Hon'ble High Court, Allahabad in aforesaid writ petition has any help in management's case.

The management has further contended that the O.N.G.C. has own recruitment rule and no appointment can be held in contravention of said rule and hence the workmen can not be regularised. It is further submitted that no order for regulatisation can be passed without existence of any permanent vacancy as the O.N.G.C. has no permanent vacancy at this stage. But from the evidence of M.W. 3, I find that the management has engaged some permanent workers by removing 15 workers involved in this case from the works. It is not established whether these permanent workers have been engaged by the O.N.G.C. by adopting any recruitment process or not. The plea of the management that there is no sanction vacancy is not tenable in law because from the evidence of M.W. 3 it is established that during the pendency of the reference management has removed 15 workers and filled up these vacancies by newly recruited person and process of recruitment is still going on.

From whatever angle, this case is judged, I am of opinion that the workers involved in this case can not be considered as contractual workmen of contract labour and under no circumstances, they can be deprived of their right of regularisation of their services. Workers are working since 1992 without any break, the project is permanent one and works done by the workmen are perenial in nature and they have requisite qualification and experience for regularisation. Considering the entire fact and circumstances of the case I am of opinion that it is a fit case where order for regularisation can be passed which I accordingly do.

In this result, I hereby, direct the management to regularised all the 69 temporary workmen in their service within a year from the date of the award Fifteen workers who have been discharged without adopting the procedure prescribed by law during the pendency of reference should be re-engaged immediately and be regularised accordingly. If all the workers can not be regularised within a period of one year they should be paid equal wages with these of regular employees till they are regularised by adopting formal procedure.

This reference is answered accordingly. Prepare and award accordingly.

K. SARMA, Presiding Officer

नई दिल्ली, 15 मार्च, 2001

का. आ. 765.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओ. एन. जी. सी. के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय आसाम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-3-2001 को प्राप्त हुआ था ।

[सं. एल-30012/3/98-आई आर (विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 15th March, 2001

S.O. 765.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the industrial dispute between the employers in relation to the ONGC and their workmen which was received by the Central Government on 13-3-2001.

[No. L-30012/3/98/IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL, GUWAHATI, ASSAM

Reference No. 12(C) of 1999

PRESENT :

Shri K. Sarma, LL.B.,
Presiding Officer,
Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute between :
The Management of O.N.G.C. Ltd.,
Sibsagar.

Versus

Their workman rep. by the Gen. Secy.,
O.N.G.C. Purbanchal Association, O.N.G.C.
Colony Complex, Sibsagar, Assam.

Dated of Award : 18-12-2000.

AWARD

The Government of India, Ministry of Labour, vide order No. L-20012/3/98/IR(M) dated 17-3-99 has made this reference under Clause 'D' of Sub-section 1 and Sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 to this tribunal to adjudicate the dispute arising between management of O.N.G.C. Ltd., Sibsagar and their workmen represented by the General Secretary, O.N.G.C., Purbanchal Association, O.N.G.C., Colony Complex, Sibsagar, Assam on the following issue :

1. "Whether the 22 contract labour as per Annexure 'A' are performing permanent and perennial nature of job in the establishment of ONGC Ltd., Sibsagar and are entitled for regular employment in ONGC ? If so, to what relief they are entitled ?"

2. "Whether the 9 contract labour as per Annexure 'B' are performing same or similar nature of work as being performed by any of the regular employee of ONGC Ltd., Sibsagar and are entitled for wages and other benefits as is admissible to other contract labours under Rule 25(2)(V)(i)(a) of the C.L. (R&A) Central Rules, 1971 ? If so, to what relief they are entitled ?"

On receipt of reference, this tribunal has registered this case and issued notices to both the parties calling upon them to file their written statement/addl. written statement and documents in response to which both the parties have filled their written statement/addl. written statement and document in support of their respective claims. Apart from filing written statement and documents, both the parties have adduced oral evidence in support of their respective claim. After completion of recording evidence, oral argument advanced by the learned advocate for the both the parties have been heard. Both the parties have also submitted written arguments.

The case of the workman, in brief, is that the two sets of employees mentioned in the Annexures 'A' and 'B' annexed to the order of reference have raised this Industrial Dispute on the following grounds. The employees mentioned in the Annexure A of the reference which are 22 in numbers and who are working as contractual worker have raised this Industrial Dispute claiming regularisation of their services. The employees mentioned in Annexure 'B' of the order of reference who are 9 in numbers have also raised the Industrial Dispute claiming equal wages with that of other employees performing similar nature of works with that of them as contemplated under Rule 25(2)(1)(A) of the Contract Labour (Regulation and Abolition) Act, 1971. The nature of works done by the workmen mentioning in the Schedule 'A' of the order of reference are as follows :

Sl.No.	Nature of Job	Working since
01.	Compressure Tecnhnician cum-Operator	1989
02.	-do-	1992
03.	-do-	1990
04.	-do-	1990
05.	-do-	1994
06.	-do-	1989
07.	-do-	1989
08.	-do-	1989
09.	-do-	1989
10.	-do-	1989
11.	-do-	1989
12.	-do-	1989
13.	-do-	1989
14.	-do-	1989
15.	Acid Pump Operator	1993
16.	AC-Operator-cum-Technician	1988
17.	-do-	1988
18.	-do-	1988
19.	-do-	1988
20.	-do-	1988
21.	Welder	1993
22.	Technician-cum-Operator	1989

Again the status of the 9 workers mentioned in schedule 'B' of the order of reference are as follows:—

Sl. No.	Nature of Job	Working since
1.	Mali	1985
2.	Sweeper	1988
3.	-do-	1988
4.	-do-	1985
5.	-do-	1990
6.	Mali	1983
7.	Sweeper	1988
8.	-do-	1988
9.	Gestetner Operator	1986

The contract labour as mentioned in serial Nos. 1 to 14 and 22 of annexure 'A' have been working at Lakwa Oil Field in difference group called as group gathering stations namely GGS 1, GGS 3, GGS 6 and GGS 8. These workers are Gas Compressure Operators Oil extracted through Drilling Pipe Consist of Oil and Gases. This mixture of Oil and Gas are to be separated from each other. This operator of separation of Oil and Gases are carried in different Group Gathering Station as mentioned above. After separation gases are to be transmitted to Central Tank Farm at Lakwa. The workers mentioned in serial Nos. 1 to 14 and 22 of annexure 'A' have been working as Compressure Operator who use to operate at different compressure station at different group gathering station. This is a continuous operation to be carried out all the year round and hence works are perennial in nature directly related to trade/business and different operation of ONGC. Moreover, this type of work is also being carried out by a set of regular employees of the management in their establishment at Lakwa, Jorhat, Borhola etc. Fifteen workers mentioned in the annexure 'A' of the order of reference are working as Acid Pump Operator who use to operate heavy vehicle own by the management. This acid is used for the purpose of washing of Gas and Oil pipe. This type of work performed by this set of worker are also permanent and perennial in nature running all the year round. The workmen mentioned in serial Nos. 16 to 20 in annexure 'A' of the order of reference are called Aircondition Technician-cum-Operator engaged in different aircondition plant of ONGC which are also perennial in nature. Again workmen mentioned in serial No. 21 of the annexure 1 of the order of reference are engaged as welder at R.D.S. (OBG) which is also permanent and perennial type.

Workmen mentioned in annexure 'B' of order of reference are also performing regular nature of work like Mali, Sweeper etc. the workmen mentioned in serial No. 9 of annexure 'B' of the order of reference is Gas Tanker Operator. This type of job are also performed by the ONGC as already mentioned in the shirt already depicted herein above. Workmen done by all the 9 workmen mentioned in schedule B have also been performed regular workers and hence they claim equal wages with that of regular workers. Moreover, the works done by workmen mentioned in annexures 'A' and 'B' of order of reference are being supervised the employee of ONGC as contractor have nothing to do with the job performed by them. Most of the workmen raising this Industrial Dispute have been continuously working since 1988-89. They have been stated to have been engaged as ocntract labour, but practically contractors have nothing to do with their works. Moreover, contractors change from time to time but workmen remain same. This being the position their engagement as contract labour through so-called contractor is nothing, but a paper arrangement with illusory person who are not in existence in order to deprive the workmen from their legitimate right of getting equal wages with the regular workmen. This practice is adopted by the management with a view to maximisation of their profit by adopting unfair labour practice and hence they are entitled to regular and also equal wages with that of regular workmen of the management.

Management, on the otherhand, has opposed the contention of the workmen by filing written statement contending inter-alia that order of reference is bad in law and unsustainable in view of the fact that the 31 employees raising this Industrial Dispute were/are never under the control and supervision of management and hence they are not direct employee of the management and hence there exists no relationship between principle employer and workmen for the purpose of raising the industrial dispute. It is further contended that dispute raised by the workmen can not be termed and Industrial Dispute under Section 2(S) of the I.D. Act, 1947 (hereinafter referred to as the act) and the management of ONGC is not the employer within the meaning of Section 2(G) of the said Act. It is also contended that the issue in question framed by the appropriate Government is bad in law and is without any material before them. The employees mentioned in schedule 'B' of the order of reference can not be considered to have been performing the similar nature of work with that of regular employee of the management. It is further contended that the workmen raising the Industrial Dispute are contract labour without existence of direct relationship between employer and employee and hence without declaration made by the Central Government under Section 10 of contract labour (Regulation and Abolition) Act, 1971 that workmen are not contract labour on their approach to that effect, and are direct employees of management, no industrial dispute can be raised and so this reference is beyond the adjudicatory power of this tribunal

Both the parties have adduced their oral evidence to substantiate their respective contention raised in their written statement. The management has exhibited ext. 1 to 2 which are some of agreement shown to have been executed between management and the so-called contractor engaged to supply of labour and ext. 3 in the office order issued by the management ext. 4 is the license issued to the management under section 7 of the contract labour (Regulation and Abolition) Act, 1971 empowering them to engaged contract labour. The union, on the other hand, has exhibited series of documents commencing from ext. 1 to 14 in support of their claim. As already mentioned above, oral arguments advanced by the learned advocate for the both the parties are heard. The first and foremost contention raised by the management in course of argument are more or less simlar in nature as has been mentioned in their written statement as already indicated herein above.

The meet point to be decided in this reference is whether the contractual worker mentioned in annexure 'A' of the order of reference are entitled to regularisation. Secondly, whether workman mentioned in the annexure 'B' of the order of reference are entitled to equal wages with that of regular workers of their Grade and status In deciding first point. It is to be noted that industrial establishment can engaged contract labour through contractor on the strength of license issued to them by the competent authority under the provision of contract labour (Regulation and Abolition) Act, 1971. Similarly, the contractor supplying contract labour by entitling into agreement with the management must have license under the said act. If both the principal employer and contractor engaging contract labour have valid license under the provision of aforesaid act, the contract can be said to be genuine. If either of them

has not obtained license and cannot produce real contractor. The contract can be said to be ungenuine or shame or camouflage done in order to maximise their profit, in inconnvience with the 'so-called' contracts by adopting unfair labour practice. If both management and contractor have valid license, workmen are really engaged by the contractor, then workmen are not the direct employees of the principal employer and can not raised the industrial dispute without seeking declaration from the Central Government as to abolition of contract labour system under section 10 of the contract labour (Regulation and Abolition) Act, 1971. In this connection the learned advocate for the workman has drawn my attention to following case law. AIR India Statutory Corpn. V. United Labour Union AIR 1997 SC P. 645. The relevant para is as follows:

"The Award proceedings as suggested in Gujarat Electricity Board case (1996 AIR SCW 2942) are be set with several incongruities and obstacles in the way of the contract labour for immediate absorption. Since, the contract labour gets into the service of the principal employer, the union of the existing employees may not espouse their cause for reference under Section 10 of the I.D. Act. The workmen, who on abolition of contract labour system have no right to seek reference under Section 10 of I.D. Act. Moreover the workman immediately are kept out of job to endlessly keep waiting for award and thereafter resulting in further litigation and delay in enforcement. The management would always keep them at bay for absorption. It would be difficult for them to work out their right. Moreover, it is a tardy and time-consuming process and years would roll by. Without wages, they can not keep fighting the litigation endlessly. The right and remedy would be a teasing illusion and would be rendered otiose and practically compelling the workman at the mercy of the principal employer. Considered from this pragmatic perspective, with due respect to the learned Judges, the remedy served out in Gujarat Electricity Board case (1995 AIR SCW 2942) would be unsatisfactory. The short coming were brought to the attention of this court. So, that part of the direction in Gujarat Electricity Board case is not, with due respect to the Bench, correct in law. The Dena Nath's case (1991 AIR SCW 3026), as held earlier, has not correctly laid down the law. Therefore, it stands overruled. Moreover, the Bombay High Court has correctly held that the High Court under article 226 of the Constitution would direct the principal employer to absorb the contract labour, after its abolition, even though some of the contractors have violated Section 12 of the Act and the appellants have violated section 7 of the Act."

He has against relied his submission in Gujarat Electricity Board, Dkai V. Hind Mazdoor Sabha. AIR 1995 SC P. 1908 para 11 runs as follows :

"These decisions in unambiguous terms lay down that after the coming into operation of the Act, the authority to abolish the contract labour is vested exclusively in the appropriate Government which has to take its decision in the matter in accordance with the provisions of Section 10 of the Act This conclusion has been arrived at in these decisions on the interpretation of section 10 of the Act. However, it has to be remembered that the authority to abolish the contract labour under section 10 of the Act comes into play only where there exists a genuine contract. In other words, if there is no genuine contract and the so-called contract is shame or "a camouflage to hide the reality, the said provisions are in applicable."

In the instant case although the management has exhibited, ext. 4 as license issued to them by competent authority under section 7(1) of the contract labour (Regulation and Abolition) Act, 1971 but no contractor who has supplied the contract labour has not been examined nor any license from the side of the contractor has not produced in this case. It is already mentioned above that both the contractor and management must have license to constitute a genuine contractor. As the contractor has not produced any license nor any person has been examine by the management as contractor in such a situation it can not be said that there is a real contractor supplying contract labour. Learned advocate for the management has submitted that W.W. 4 Haran Ch. Jkhowa has stated in his cross-examination that ONGC is a registered employer under the contract labour (Regulation and Abolition) Act, 1971 and also contractor have the license under the same. But this place of evidence in cross-examination of W.W. 4 is not enough to hold that contractor have a license. Proper appreciation of this piece of evidence is that both the employer and contractor must have licénse under the contract labour (Regulation and Abolition) Act, 1971 as already mentioned above. But it does not mean that contractor engaging contract labour in this particular case has any license. Had these been any license from the side of the contractor it should have been definitely produced by the management and the contractor must have been examined by them as witness. It is a settled principles of law of evidence that burden lies on the parties who allege the thing. As it is the defence of the management that workmen are contractual worker under the genuine contract between management and the contractor. It is their burden to prove the case by producing contractor as well as licence. As materials to that effect are not on record. It can not be held that there is a genuine contract between management and contractor. It is also established from the materials on record that workman involved in this case remain same, but contract changes from time to time. But as none of the contractor have been produced nor the agreement ext. 1, 2 etc. allegedly executed between management and the contractor has been proved by the management by producing contractor with their licence as witness. It can not be held that there is any genuine or real contract. In that case, the so-called contract is nothing but a paper without existence of real contractor, done with a ulterior motive for exploiting the labour with a view to maximisation of profit which is agtinst the basic norms labour legislation. In Hussain Bhai. Calcutta Vs. The Alath Factory Theshilali Union Kazhikide and others (1978) 4 SCC P. 257. It is held as follows:

"The facts found are that the work done by the workman was on integral part of the industry concerned, that the raw materials was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade.

The workmen were broadly under the control of the management and defective articles were directed to be rectified by the management. This concatonation of circumstances is conclusive that the workmen were the workmen of the petitioners." It has been for the held in said case that the court can lift the veil to uncertain as to who is the real Master. Mere paper arrangement to indicate the existence of contractor would not debar the so-called labourers to be declared as the employees of principal employer, if it is established that these workers really produce goods or services for the business of the principal employer then these contract labourers should be considered as the employees of the principal employer. On reliance of this judgement, it has been further held that Industrial Court in a reference under section 10 of the Industrial Disputes Act, 1947 can apply the doctrine of lifting of veil and can ascertain the fact whether the workers performing the perennial nature of jobs. (Secretary H.S.E.B. Vs. Suresh AIR 1999 SC 1161). It was further held that if the jobs performed by the so-called contractors are not seasonal, but perennial nature and existence of contractor is a paper arrangement and the contractor in question is not a licensed contractor then the workers shown as contract labourers should be considered as the employees of the Principal employer. It was further held if these workers worked for a period of more than 240 days then they should be regularised."

From the forgoing discussion it has been aparently clear that there was no genuine contract between management and the 'so called' contractor to engage contract labour. The defence set forth by the management that workmen involved in this case are contract labour by producing some agreement allegely executed between management and so called contractor is nothing but a paper agreement just to exploit the labour under the veil of so called contract system with an ulterior motive of making more profit at the cost of the workers by adopting unfair labour practice. The purpose of the labour legislation is to protect the workmen for the explanation by the management by depriving them of their dues earned at their pains. In the instant case the equipments used by the workmen belong to the management, the industrial complex used by them belong to management their works are supervised by the management their bills are passed by the management, they are paid from the fund of the management, under such circumstances, it is ridiculous to say that employees have no direct connection that the management and they are under the control of the as called contractor. The duty of the adiudicator of the industrial dispute is to unvail the truth being hidden by the management for the purpose applying unfair labour practice exploiting the poor workers thereby making huges profit by them at their cost. In course of enquiry all the circumstances which have come out in this case have established that all the workers are direct employees of the management and their claim for regularisation is genuine.

Moreover, all the worker have been working continuously for 10 to 12 years covering 240 days in every year and hence they have every right to raise this dispute for regularisation.

For the forgoing reason, I hold that all the workmen involved in this case are not contract labour in true sense of the terms and they have every right to raise the dispute.

Another point aggitated by the management is that in forming the issue the appropriate Govt. has prejudged the issue by holding that contract labour are performing same and similar nature of work done by any of the regular employees of the management. As the appropriate Govt. has no material before them is held that the contract labour are performing similar nature of work done any of the regular workers at the time of framing the issue, the issue itself is defective and beyond the adjudicatory power of the tribunal. It is also contended even incourse of hearing that workmen witness have not proved this aspect of the case. As the issue in question is not in accordance with law the tribunal, can not arrive at any decision on the basis of defective issue.

The learned advocate for the workmen has rebutted this submission by referring the decision rendered by the Appex Court in Telco Convey Drivers Mazdoor Singh V. State of Bihar, and anothers AIR 1989 SC P 1565 wherein it is held as follows :

> "While exercising power under S. 10(1), the function of the appropriate Govt. is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Govt. can not delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly by in excess of the power conferred on it by S. 10. It is true that in considering the question of making a reference under S.10(1), the Govt. is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended". But the function of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adiudicate the dispute itself on its merits. Where, as in the instant case, the dispute was whether the persons raising the dispute are workmen or not, the same can not be decided by the Govt. in exercise of its administrative function under S. 10(1) of the Act. The order of the Govt. refusing to refer the dispute on ground that the persons raising the dispute are not workmen is liable to be set aside. As the Govt. had persistently declined to make a reference under S. 10(1), the Supreme Court directed the Govt. to make a reference. "In view of the aforesaid settled position of law laid down by the Appex Court, I am of opinion that mere mention in the order of reference that 9 workers mentioned in the annexure 'B' of the order of reference No. 2 that they are discharging same nature of work with that of any regular employees and are entitled to same wages can not deter the tribunal from arriving at a conclusion to that effect after holding necessary enquiry.

The management has further challenge the locus standi of the union raising this industrial dispute. According to management, the Purbanchal Association of ONGC has no locus standy to raise this dispute. But I am unable to accept this submission because any registered union registered made Trade Union Act can raise the Industrial Dispute for themselves or on behalf of the employees who are members of the union. All the employees involved in this case are members of the union registered under the provision of Trade Union Act and hence they have every night to raise the dispute.

So far as the 9 employees mentioned in Annexure 'B' of the order of reference No. 2 is concerned, it is established from the evidence on record that they are doing equal nature of work with that of regular employees, but unfortunately they are paid less by the management than these of regular employees. As they are doing similar nature of work, they must be paid equal wages with these of regular employees following the principle of "equal pay for equal work'. Paying less amount of remuneration to an employee than a regular one doing similar nature of work by both of them, is clear discrimination in the eyes of law and amounts to unfair labour practice by the management to earn more profit at the cost of the workmen and hence they are also entitled to equal wages with those of regular one.

For the forgoing reason, I hereby hold that the name of the employees mentioning annexure 'A' and 'B' of order of reference are contract labour and hence they are entitled to rgularisation and equal wages with that of regular employees. Accordingly, it is ordered that all the employees mentioned in both the annexure 'A' and 'B' of order of reference should be regularised within a year from the date of this award. If all of them can not regularised within a year, they should be paid equal wages with those of regular employees till their regularisation. It is further ordered that employees mentioned in annexure 'B' of the order of reference should be paid equal-wages with that of regular employees for doing same nature of work with a period of 3 months from the date of this award.

With above direction both the issues are answered in favour of the workmen and management is directed to do needful as directed above prepare an award accordingly.

K. SARMA, Presiding Officer

नई दिल्ली, 20 मार्च, 2001

का. आ. 766.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ ट्रावनकोर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नई दिल्ली के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 19-3-2001 को प्राप्त हुआ था ।

[सं. एल-12012/140/98-आई आर (बी-I)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 20th March, 2001

S.O. 766.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Travancore and their workman, which was received by the Central Government on 19-3-2001.

[No. L 12012/140/98 IR(B-I)]
AJAY KUMAR, Desk Officer

अनुबंध

समक्ष श्री केशव सरन श्रीवास्तव, पीठासीन अधिकारी, केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नई दिल्ली ।

विवाद सं. आई.डी. 32/99

श्री राजकुमार
पुत्र श्री छोटे राम,
निवासी एफ 153, बुद्ध नगर (इन्दरपुरी)
नई दिल्ली—110012 ।

बनाम

स्टेट बैंक ऑफ ट्रावनकोर
द्वारा
उप महाप्रबन्धक
स्टेट बैंक ऑफ ट्रावनकोर
स्टेट बैंक ऑफ ट्रावनकोर हाउस
18/4 आर्य समाज रोड, करोलबाग,
नई दिल्ली—110005 ।

उपस्थिति : कर्मकार की ओर से कोई उपस्थित नहीं हुआ ।
प्रबन्धक की ओर से श्री रजा अरोड़ा अधिकृत प्रतिनिधि ।

अधिनिर्णय :

पक्षकारों के मध्य औद्योगिक विवाद उत्पन्न पाकर के सरकार के श्रम मंत्रालय के आदेश सं. एल-12012/140/98/आई. आर. (बी-1) दि. 6-1-99 द्वारा यह औद्योगिक विवाद अन्तर्गत धारा 10(1)(घ) व 2(क) औद्योगिक विवाद अधिनियम 1947 (संक्षेप में अधिनियम) निम्नलिखित विवाद के न्याय निर्णय हेतु प्रेषित किया गया है ।

"Whether the circumstances of the case, Sh. Raj Kumar is entitled for retrenchment compensation on disengagement from service by State Bank of Tranvencore ? If so, to what other relief the workman is entitled ?"

वाद के पंजीकृत होने के पश्चात आदेश दिनांकित 14-1-99 द्वारा उभय पक्षों को अपने पक्ष लिखित रूप में रखने हेतु नोटिस भेजे गये । नोटिस के पश्चात कर्मकार पहले नियत अनेकों तिथियों पर उपस्थित नहीं हुआ केवल प्रबन्धतंत्र की ओर से ही उसके अधिकृत प्रतिनिधि उपस्थित हुए ।

ज्ञात हो कि दिनांक 8-4-99 से 25-10-99 तक अधिकरण में पीठासीन अधिकारी की रिक्तता थी ।

आदेश पत्र दिनांकित 2-5-2000 के अवलोकन से प्रतीत होता है कि कर्मकार उक्त तिथि को स्वयं उपस्थित

हुआ तथा वाद पत्र प्रस्तुत करने हेतु निश्चित रूप से समय की माग किया जो स्वीकार हुई । परन्तु उक्त तिथि के पश्चात् कर्मकार किसी भी तिथि पर उपस्थित नही हुआ, और न ही उसकी ओर से कोई वादपत्र प्रस्तुत किया गया । अतः अन्तिम तिथि 13-1-2000 को भी जब कर्मकार वाद मे उपस्थित नही हुआ केवल प्रबन्धतन्त्र की ओर से प्रतिनिधि उपस्थित हुए । कर्मकार के विरुद्ध एक तरफा कार्यवाही किए जाने का आदेश पारित किया ।

चूकि वाद मे उभयपक्ष द्वारा कोई लिखित पत्र प्रस्तुत नही किया गया अतः वाद मे बिना कोई विवाद अधिनिर्णय पारित किया जाता है ।

दिनांक : 27-2-2001

केशव सरन श्रीवास्तव, पीठासीन अधिकारी

नई दिल्ली, 21 मार्च, 2001

का. आ. 767.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण मे, केन्द्रीय सरकार उत्तरी-पूर्वी रेलवे के प्रबन्धतन्त्र के सबद्ध नियोजकों और उनके कर्मकारो के बीच, अनुबध मे निर्दिष्ट औद्योगिक विवाद मे केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-03-2001 को प्राप्त हुआ था ।

[स. एल-41012/140/99-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 21st March, 2001

S.O. 767.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of North Eastern Railway and their workman, which was received by the Central Government on 20-03-2001.

[No. L-41012/140/99 IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Presiding Officer : Rudresh Kumar

ADJUDICATION

I.D. No. 4/99

BETWEEN

Banarsi Shah,
S/o Yamuna Shah,
Beluia Batia,
P.O. Batia,
Thana Daroli,
Distt. Siwan (Bihar).

AND

The Divisional Railway Manager (P),
North Eastern Railway,
DRM Office,
Ashok Marg,
Lucknow.

AWARD

By reference No L-41012/140 99-IR(B I) dated 31-8 1999 the Central Government, in the Ministry of Labour, in exercise of powers conferred by clause (d) of the sub section (1) of section 10 I.D. Act, 1947 made over this industrial dispute between Banarsi Shah and Divisional Railway Manager (P) North Eastern Railway, Lucknow for adjudication. The reference is re-produced as under :

"Whether the action of North Eastern Railway in terminating the services w.e.f. 16-2-1988 of Shri Banarsi Shah from the post of casual khalasi was legal and justified ? If not what relief the workman is entitled to and from what date ?"

2. Admitted case is that the workman, Banarsi Shah, was appointed as Substitute Khalasi in the scale of Rs. 750-940 vide order No. E-11/227/6/Elect dated 26-11-1987. He worked in the said capacity continuously till 15-2-1988, till discharged from service on 16-2-1988 by a written order.

3. The grievance of the workman, is, that prior to 1981, he remained engaged as Casual Khalasi from 6-5-79 to 5-3-80 under PWI/Broad Guage/Construction, North Eastern Railway, Gorakhpur. He was again engaged as casual Khalasi on 17-9-80 and continued till 14-5 1981. Though he worked for more than 240 days, but correct entries were not made. He was appointed on a regular post on 26 11 1987 in the Electrical Branch' and enjoyed temporary status and availed facility of privilege pass etc. but all of a sudden discharged vide letter dated 15-2-1988, without assigning any reason. He made a number of representations but could not get justice hence has raised this industrial dispute.

4. Themanagement has refuted workman's illegations of his having worked for more than 240 days before or after 1981. It is asserted that the workman worked for 73 days only as per rules and this period is not sufficient to acquire temporary status, prior to 1981. It is further stated that his engagement subsequent to 1 1-1981 was illegal, being without personal approval of the General Manager. It is emphasised that statutory ban was imposed in engaging casual labours since 1-1-1981, and those engaged in certain exigencies were accorded post approval. The workman's engagement had no approval and his tenure as aforesaid would not qualify him to gain legal status.

5. Parties relied on oral and documentary evidence. Material evidencee relied by the workman is appointment order dated 26-11 1987 (Ex. W-3) This document is not denied by the management However, the management justifies its action by stating that subsequent scrutiny found workman not to has completed requisite period of 120 days/240 days before 1-1-1981 and thus his appointment was against law and also frudulent.

6. The management pleads further that the workman had worked in Civil Engineering branch and not electrical branch. Works in the two branches were quite different. The workman could be considered only, if he had performed 'same' or 'similar type' of work. He got appointment concealing facts which were scrutinised in screening. Administrative action was initiated against the officer concerned Late Shri Murti Lal, whose dues are still not cleared All such workmen, including Banarsi Shah were discharged

7. The management justifies its action, also, by pleading that Ex. W-3 (appointment letter) is very specific that those appointed prior to 1981 were considered. Such services after 1981 were not qualified, in absence of pre/post approval of the General Manager, to make the workman eligible, since such engagement as casual labour was against the ban order.

8. The management pleaded its constraints to produce Screening Committee report and other original documents because the concerned files were removed and not traceable In this connection it is pertinent to mention that the workman relied on Ex. W-1 (Record of service of casual labour) Ex. W-12 (Letter DRM(p) addressed to Senior Electrical Foreman dated 4-11-1996, Ex W-13 (Letter dated 13-12-1996) Ex W-14 (Letter dated 12/13 November 1990 with enclosures) all photo copies of the office records, stated to have been stolen Original of these documents are not filed Also, the workman does not disclose source of these documents Such documents unless properly and legally proved, can not be made basis of claim, as this practice would encourage removal of files, in unholy league with unscrupulous officials Genuineness of the above said documents is not proved

9. Ex W-1 is the basis of claim, stating that the entries since 6-5-79 to 5-3 80 were not considered while counting

pre 1981 services. Original copy of Ex. W-1 was filed belatedly. Under the relevant rules, Ex. W-1 is office record and not casual labour card issued to the workman. How the original of Ex. W-1 came in hand of the workman, is not explained. The workman did not file his casual labour card, showing actual service by him. Casual Labour Card bears photograph of the workman and designation and name of the issuing authority. Under the rules, this card is made only once and all entries, in one working region or the other, must be noted on it. The workman has filed Ex. W-2 casual labour card issued in his favour. This card has his photograph. First entry in this card was made on 17-9-80 and last 14-5-1981. Surprisingly, this card does not mention earlier working periods mentioned in Ex. W-1. Had the workman actually worked as per Ex. W-1, these periods should have find reference in Ex. W-2. In absence of Casual Labour card relating to periods mentioned on Ex W-1, the genuineness of Ex. W-1 is doubtful. Nothing stated or explained as why casual labour card bearing photograph of the workman, with entries from 6-5-79 to 6-3-80 not filed? Why a Second casual labour card was got issued against rules? The workman failed to discharge his onus to relate Ex. W-1 and Ex W-2. The original of Ex. W-1 does not give name in full of the Supervising Officer. All the entries ranging from 6-5-79 to 6-3-80 were made on the same day. There is no material to connect as how and where, working entries were kept to be entered on a single day. Had it been a Casual Labour Card, one could have given benefit to the workman, treating the entries made on the basis of record of service of casual labour. In the present case, casual labour card is not produced, entries in official record made on a single day without disclosing basis for the same, the official concerned was not examined to substantiate correctness of entries, these working periods were concealed when regular appointment obtained on 26-11-1987 which is very specific about pre-1981 services. In the given circumstances entries in Record of Service of Casual Labour Ex. W-1 can not be taken to be genuine and reliable.

10. Excluding the above said period, the periods mentioned in Ex. W-2 may be considered. Pre-1981 period entered in it are 17-9-80 to 30-11-80=75 days, and 16-12-80 to 28-2-81. Only period upto 31-12-80 can be considered. Thus, the total working period before 1981 comes to 75+15=90 days only. It has already been mentioned that post 1-1-1981 services, remaining unapproved and against the ban order would not qualify for legal claim.

11. It is submitted by the Learned Authorised Representative for the workman, that missing of the relevant file is manipulation. This submission is belied by the workman's documents Ex. W-14. Column No. 6 of this annexure, mentions missing of the file. Likewise, there is also similar remark against the name of the workman. The Screening was not secret, and the workman has not denied screening of all those appointed by order dated 26-11-1987. On the basis of pre-1981 service as discussed above, his discharge was justified.

12. Thus, in totality of the facts and circumstances, the discharge of the workman, who procured regular appointment in electric branch though having worked for about 90 days before 1981 in civil branch, can not be held to be illegal or unjustified. His termination w.e.f. 16-2-1988 was justified and he is not entitled to any relief.

13. Award accordingly.

RUDRESH KUMAR, Presiding Officer

26-2-2001.
LUCKNOW

नई दिल्ली, 21 मार्च, 2001

का. आ. 768 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चम्बल क्षेत्रीय ग्रामीण बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-2001 को प्राप्त हुआ था।

[सं. एल-12012/250/93-आई आर (बी-I)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 21st March, 2001

S.O. 768.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chambal Kshetriya Gramin Bank and their workman which was received by the Central Government on 20-3-2001.

[No. L-12012/250/93-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No. CGIT/LC/R/31/94

Presiding Officer : Shri K. M. Rai.

Shri Harisaran Savita,
S/o Shri Gotiram
H. 121, Mayur Nagar Thatipur,
Morar Distt.
Gwalior. ... Applicant

Versus

Chambal Kshetriya Gramin Bank
Through its Chairman,
H.O. Jiwajiganj, Morena. ... Non-applicant

AWARD

Passed on this 8th day of March, 2001

1. The Government of India, Ministry of Labour vide Order No. L-12012/250/93-IR B-I dated 28-3-94 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Chambal Kshetriya Gramin Bank in terminating the services of Shri Harsharan Savita w.e.f. 17-8-91 is legal and justified ? If not, what relief the workman is entitled to ?"

2. The case for the workman is that he was appointed as a messenger in clear vacancy by the Chambal Kshetriya Gramin Bank w.e.f. 17-8-91. No written appointment order was issued to him. He was regularly paid monthly wages by the management. His monthly salary was being deposited in

Bank's Saving Account No. 1185 at Parsota branch. He had continuously worked for 376 days as messenger in the Bank's employment. On 26-8-92, his services were illegally terminated by the management. The termination order passed by the management is illegal which deserves to be queshed. He is entitled to reinstatement with all back wages.

3. The case for the management is that the workman was never employed as messenger w.e.f. 17-8-91. He was appointed as casual worker on daily wage basis to perform the work of sweeper in Parsota branch. The Branch Manager had employed him only for a limited work with respect to clean the branch office. The Branch Manager had no legal authority to appoint the workmen as casual worker. The chairmna of the Bank is legally authorised to make such appointment. The chairman had not appointed the workman as messenger w. e. f. 17-8-91 as alleged by him. The workman was never appointed in a clear vacancy caused due to transfer of Shri R. D. Rathore from Parsota branch. The workman's job was limited for only 2-3 hours in the morning and evening every day. The workman hadn not performed the duty which was being performed by Shri R. D. Rathore. The workman was being paid wages at the rate of Rs. 10|- & Rs. 15|- per day. The workman's services were terminated by the Bank. His employment was for a limited period and therefore he was discontinued to perform duty the moment his term of employment was over. The workman is not entitled to any relief as claimed by him.

4. The following issues arise for decision in this case—

1. Whether the workman is entitled to reinstatement with back wages.

2. Relief and costs ?

5. Issue No. 1 : The workman claims to have been appointed as messenger on 17-8-91 and posted at its Parsota branch Distt. Morena. No written appointment order was issued to him by the management. According to him his appointment was on a clear vacancy for messenger. He continuously worked for 376 days and the wages at the rate of Rs. 15|- per day were paid to him. His services were terminated w.e.f. 26-8-92 without assigning any reason or serving him with statutory notice.

6. For the appointment to any post in the Bank, the recruitment rules have been framed and they have the force of law. The provisions of recruitment rules must be complied with in respect to the appointment to any post by the bank. In this case, neither the vacancy was notified by the management nor the application to fill up the vacancy was incited. The name of the workman was never sponsored through the local employment exchange for appointment to the post of messenger. Neither any examination was conducted nor the workman faced any interview for selection to the reguular post of messenger. He had been given temporary appointment by the Bank for a particular period and for a specific purpose of cleaning the branch office. He was given temporary appointment by the concerned branch manager of the Bank. The Branch Manager had no authority to appoint any casual or temporary worker in the bank. Only the chairman of the Chambal Kshetriya Gramin Bank, Morena was legally authorised to make such appointment. The workman has not been able to prove that he was appointed by the chairman of Chambal Kshetriya Gramin Bank, Morena according to rules laid down in respect thereof. Such appointment made by the authority not empowered under rules is illegal and on this basis, no person can claim the right to the post. At the same time, the recruitment rules have also not been followed in making the appointment to the post of messenger as alleged by the workman. In such a case, the very appointment of workman is void-ab-initio and therefore he cannot be regularised. He is not entitled to reinstatement with back wages as claimed by him.

7. Issuue No. 2 : On the reasons stated above, it is held that the termination order of the workman is just and proper. He is not entitled to reinstatement with back wages. The reference is accordingly answered against the workman and in favour of the management.

8. Copy of award be sent to the Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 21 मार्च, 2001

का. आ. 769 —औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफ इंदौर के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-2001 को प्राप्त हुआ था ।

[सं. एल-12012/256/89-आई आर (बी-1)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 21st March, 2001

S.O. 769.—In pursunce of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Indore

and their workman, which was received by the Central Government on 20-3-2001.

[No. L-12012/256/89-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No CGIT/LC/R/22/90

Presiding Officer : Shri K. M. Rai.
Shri Vinod Kumar Gupta,
R/O Mathur Vaishya Colony,
Porsa Road,
R/O Ambah,
Distt. Morena .. Applicant

Versus

The Regional Manager,
State Bank of Indore,
Regional Office,
Modi House,
Gandhi Road, Gwalior ... Non-applicant

AWARD

Passed on this 2nd day of March, 2001

1. The Government of India, Ministry of Labour vide Order No. L-12012/2/56/89 dated 23-1-90 has referred the following dispute for adjudication by this tribunal—

"Whether the action of the management of State Bank of Indore, Gwalior in not providing employment to Shri Vinod Kumar S/o Ramprakash Gupta clerk-cum-cashier after 14-6-83 and whether his termination is justified ? If not, what relief the workman is entitled for ?"

2. The case for the workman is that he was appointed as clerk-cum-cashier on a clear vacancy by the management on 1-4-83. At that time no written order was given to him. The management issued the appointment order on 30-4-83 to the workman treating him as a fresh appointee w.e.f. 2-8-84 His appointment was against a permanent vacancy. On 14-6-83, his services were terminated by the management. After his termination new persons were appointed to fill up the vacancies in Amba branch. He represented against the termination of service but no action was taken by the management in this respect. The management had illegally terminated his services in violation of the awards, settlements and provisions of Sec. 25-G and H of the I.D. Act, 1947. He is therefore entitled to reinstatment with full back wages and other monetary benefits.

3. The case for the management is that the workman was appointed temporarily for a fixed period of 75 days from 1-4-83 to 30-4-83 and from 2-5-83 to 14-6-83 as clerk-cum-cashier at Amba branch. The appointment orders were issued by the management for both these periods. The appointment of the workman was not done against regular vacancy. Infact he was appointed in leave vacancy of branch's permanent staff. The recruitment of permanent clerical staff can be made by the Bank only through the Regional Banking Recruitment Board as per the Banking Services Recruitment rules. The bipartite settlement dated 19-10-66 permits appointment of temporary employees against such permanent vacancies only for a maximum period of 3 months. As soon as the term of specified period of employment came to an end, the services of workman were automatically terminated. No temporary employees were appointed during the years 1985 and 86. Some temporary employees had been casually employed during the years 1983-84 against leave vacancies, resignation and transfer of permanent staff and also on accouunt of temporary increase in work of permanent nature.

4. The management further alleges that the claim of the workman is belated. The Bank had not violated any provisions of Award, settlement and law as in force. The provisions of Sec. 25(G) & (H) of the I.D. Act, 1947 and rules 76, 77 & 78 of the I.D. (Central) Rules 1957 are applicable only in the case of workman who has been in continuous service for not less than one year. The said provisions are applicable only in the case where the workman actually serves for 240 days in 12 calendar months The workman cannot get the benefit of the provisions of Sec. 25-G&H of Industrial Dispute Act, 1947. The present dispute is not covered by retrenchment as defined under Sec. 2(oo) of I.D. Act, 1947. In view of all these facts, the workman is not entitled to any relif as claimed by him.

5 Th following issues are arising for decision in this case—

1 Whether the workman is entitled to reinstatement with back wages ?

2. Relief and costs ?

6. Issue No 1 : Admittedly by workman was temporarily engaged by the management for a fixed period of 75 days to perform the duty of clerk-cum-cashier. This appointment was done in leave vacancy. After the expiry of the period, the workman was disengaged by the Bank. In this connection it was vehimently argued by the learned counsel for the workman that the case of workmen is covered under the provisions of Section 25-G & H of I.D. Act, 1947. In this connection, I would respectfully differ from the

argument of the learned counsel for the workman. The workman never continuously worked for 240 days in a calendar year preceeding the date of termination of service. In view of this fact, it caanot be said that he was retrenched from service as it its clear from the provisions of Sec. 25-F and Sec. 25-B of the I.D. Act, 1947.

7. For the regular appointment to the post of cashier-cum-clerk, the provisions of recruitment rules had to be followed. In the instant case. The workman was never selected by the Banking Recruitment Board for the appointmnt to the said post according to the recruitment rules. No temporary employee can claim his right to the post without following the recruitment rules regarding the selection to the post of clerk in the Bank. The appointment to the post of clerk in the Bank through back door entry has been depricated by the Apex Court also. In such a circumstance, the workman has no right to the post of cashier-cum-clerk merely by working for a period of 75 days in the Bank in the leave vacancy only. In view of this fact also it cannot be held that the workman was retrenched from service. If there was no retrenchment, then he is not entitled to any relief under the provisions of I.D. Act. 1947.

8. The workman has not been able to establish by satisfactory evidence that any other new persons were appointed as cashier-cum-clerk by the bank after he was disengaged from service. The heavy burden lay on the workman to prove this fact to strengthen his case. He has miserably failed to establish it. This fact also goes to show that the workman was never retrenched from service as per the provisions of Sec. 25-F of the I.D. Act, 1947.

9. In view of the foregoing reasons, it is held that the workman was not retrenched by the Bank. He is therefore not entitled to reinstatement with back wages. Issue No. 1 is answered accordingly y.

10. Issue No. 2 : In view of my findings given on Issue No. 1, the workman is not entitled to any relief as claimed by him. The reference is accordingly answered against the workman and in favour of the management.

11. Copy of the award be sent to the Ministry as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 21 मार्च, 2001

का. आ. 770.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चम्बल क्षेत्रीय ग्रामीण बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-2001 को प्राप्त हुआ था ।

[सं. एल-12012/148/93-आई आर (बी-I)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 21st March, 2001

S.O. 770.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chambal Kshetriya Gramin Bank and their workman, which was received by the Central Government on 20-3-2001

[No. L-12012/148/93-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

CASE NO. CGIT/LC/R/27/94

Presiding Officer : Shri K. M. Rai.

Shri Shankerlal Arora,
R/o Uda Ji Ki Payga,
Nai Sarak,
Janakganj, Lashkar,
Gwalior — Applicant.

Versus

Chambal Kshetriya Gramin Bank
through Chairman,
Chambal Kshetriya Gramin Bank,
Jiwahiganj, Morena — Non-applicant.

AWARD

Passed on this 8th day of March, 2001

1 The Government of India, Ministry of Labour vide order No. L-12012/148/93-IRI dated 7-3-94 has referred the following dispute for adjudication by this tribunal—

"Whether the action of the management of Chambal Kshetriya Gramin Bank, Morena in terminating the services of Shri Shankerlal Arora w.e.f. 6-7-1992 is legal and justified? If not, what relief the workman is entitled?"

2. The case for the workman is that he was appointed as peon for 89 days w.e.f. 2-4-91 at Gaheli Kunathar Branch. Thereafter his services were terminated by verbal order of the Branch Manager. He made representation to the Chairman of the Gramin Bank who appointed him as peon by verbal order in Malanpur Branch of the Bank. No written appointment order was given to him. He was engaged for the whole day but he was paid wages at the rate of Rs 10 only. His daily wages were increased from November 1991. Thereafter he was teransferred from Malanpur Branch to Goras Teh Shivpuri where he worked from 22-8-91 to 25-8-91. He worked there in leave vacancy. Again he was engaged in Malanpur Branch on 26-8-91 to perform the duty of peon. He continuously worked at Malanpur Branch of the Bank till 6-7-92. The management with malafide intention did not pay the wages of full work day and in this way they exercised unfair labour practice. The Branch Manager illegally terminated his service on 6-7-92 in clear violation of the provisions of Sec-25-F of the I.D. Act, 1947. He was neither given any notice nor any retrenchment compensation prior to termination of his services w.e.f. 6-7-1992. He had continuously worked for 240 days in a calendar year preceding the date of termination of his service. He is therefore entitled to reinstatement with back wages.

3 The case for the management is that the workman was appointed as part time messenger temporarily in Gaheli Kanathar Branch of the Bank on 2-4-91 He worked upto 14-6-91 and thereafter he left the job The workman had never made any representation to the Chairman of the Bank for his re-employment The Chairman of the Bank had never appointed him as peon by any verbal order The then Branch Manager of Malanpur Branch had engaged the workman as a part time casual sweeper for cleaning the Branch Office His work was for limited period and therefore he was paid wages at the rate of Rs 10 per day Subsequently it was increased to Rs 14 per day from 1-11-91 The workman was never engaged by the Bank for full time work The workman had never worked at Goras Branch as claimed by him He had never performed the duty of peon in the Bank His wages were not deducted by the management He had never continuously worked for more than 240 days in a calendar year No unfair labour practice was exercised by the management in the alleged deduction of his wages The workman was paid all the remuneration for the days he actually worked He is not entitled to any retrenchment compensation under Sec 25 F of the I D Act 1947 He was never retrenched by the Bank as claimed by him He was not in the regular employment of the Bank and therefore he is not entitled to reinstatement with back wages in the instant case

4 The following Issues arise for decision in this case—

1 Whether the workman is entitled to reinstatement with back wages ?

2 Relief and costs?

5 Issue No 11

The workman's case is that he was verbally appointed as peon by the Chairman of the Chambal Kshetriya Gramin Bank Morena and posted at Gaheli Branch on 2-4-91 and he continued to work till 14 6-1991 He also continued to work at Malanpur Branch of the Bank till 6-7 92 The contention of the management is that the workman was appointed as a part time messenger temporarily in Gaheli Kanather Branch of the Bank on 2-4 91 and worked till 14 6 91 Thereafter he left the job It is further contended by the management that the workman was engaged only as a part time casual sweeper to clean the premises of the Bank during morning and evening hours for which he was paid Rs 10 per day He never worked for the whole day a claimed by him

6 For the appointment to a regular post by the Bank, certain mandatory formalities have to be observed as per recruitment rules In the instant case, the workman has nowhere stated that his name was sponsored through the local employment exchange for the appointment to the post of peon in Chambal Kshetriya Gramin Bank, Morena It is also not stated by him that the vacancy was notified and the applications for the same were invited by the management to fill up the same He was never interviewed by the selection committee as per recruitment rules Without observing the provisions of recruitment rules no person can be given regular appointment to the post of peon in any Bank through back door entry If any person manages to get such appointment then it is void ab initio On the basis of such appointment no person can claim to be regularised to a particular post in the Bank In view of this fact, the workman in the present case is not entitled to reinstatement with back wages as claimed by him Issue No 1 is answered accordingly

7 Issue No 2 : On the reasons stated above the workman is not entitled to any relief as claimed by him The reference is accordingly answered against the workman and in favour of the management

8 Copy of award be sent to the Ministry as per rules

K M RAI Presiding Officer

नई दिल्ली, 21 मार्च, 2001

का आ 771—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडियन ग्राम बैंक के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-2001 को प्राप्त हुआ था ।

[सं एल-12012/138/2000-आई आर (बी-I)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 21st March, 2001

S O. 771—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank, and their workman, which was received by the Central Government on 20-3-2001

[No L-12012/138/2000-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT, CHENNAI

Tuesday the 13th February, 2001

PRESENT :

K KARTHIKEYAN, Presiding Officer

Industrial Dispute No. 67/2000

(In the matter of dispute for adjudication under Section 10(1)(d) & sub-section 2(A) of the Industrial Disputes Act, 1947 between the Claimant and the Management for Pandian Grama Bank, Virudhunagar)

BETWEEN

The General Secretary,
Pandian Grama Bank Employees,
Association,
Virudhunagar — Claimant/I Party.

AND

The Chairman,
Pandyan Grama Bank,
Virudhunagar — Management/II Party

APPEARANCE

For the Claimant —M/s PVS Giridhar Rajeni Ramadas & A Manjula, Advocates

For the Management —M/s. NGR Prasad, K Srinivasamurthy and W T. Prabakhar, Advocates

Order No L-12012/138/2000/IR (D1) dated 8-9-2000, Government of India, Ministry of Labour, New Delhi.

This dispute on coming up before me for final hearing on 15-1-2001 upon perusing the reference, Claim Statement, Counter Statement and other material papers on record, documentary evidence let in on either side and upon hearing the arguments of Sri P.V.S. Giridhar, counsel for the Claimant and Sri N.G.R. Prasad, counsel for the Management and this dispute having stood over till this date for consideration, this Tribunal pass the following award :

This reference by the Central Government in exercise of the powers conferred by Clause (d) of Sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 in respect of dispute between Shri V. Naganathan, Cashier of the Bank and the Management of the Pandyan Grama Bank, Virudhunagar mentioned as Schedule appended to the order of reference.

The Schedule reads as follows : —

"Whether the action of the Chairman, Pandyan Grama Bank, Virudhunagar in stopping three annual increments with cummulative effect to Shri V. Naganathan, Cashier of the Bank is legal and justified ? If not, to what relief the concerned workman is entitled to ?

On receipt of the reference, this industrial dispute has been taken on file of this Tribunal on 26-09-2000 as Industrial Dispute No. 67/2000. On receipt of the notice from this Tribunal both the parties appeared with their respective counsel and filed their respective Claim Statement and Counter Statement with their documents.

2. The averments of the Claim Statement of the Claimant/Petitioner/I Party are briefly as follows :—

The I Party Claimant (hereinafter referred to as Petitioner) is the General Secretary of Pandyan Grama Bank Employees Association, Virudhunagar, has filed this claim petition. The Petitioner has raised this industrial dispute in respect of Mr. V. Naganathan, the workman, who joined service in the Pandyan Grama Bank (hereinafter referred to as Respondent) on 4-4-1984 as Clerk-cum-Cashier. From the inception of his service, he has been discharging his duties in a sincere and dedicated manner. While so, a charge memo dated 12-12-95 was issued by the Respondent to the concerned workman alleging that he had demanded and accepted 10 per cent of the loan amount as illegal gratification along with Field Officer Sri N. Suruli Bommaiyan and the Branch Manager Sri O. Arumugam, while disbursing of five small loans and seventeen charcoal loans to different borrowers during the period December, 1993 to March, 1994. The concerned workman submitted his explanation dated 23-1-96 denying all the charges. An enquiry was held into the so called charges. The Enquiry Officer conducted the enquiry in a prejudiced manner in violation of principles of natural justice. By a report dated 14-6-97. The Enquiry Officer without assessing the evidence on record in an impartial manner held the workman guilty of the charges. A show-cause notice dated 16-10-97 was issued to the workman to which he submitted a reply dated 1-11-97. However, by an order dated 19-5-98, the respondent imposed penalty of stoppage of three annual increments with cumulative effect. Against that the concerned workman preferred an appeal dated 1-6-98. But the appeal was mechanically rejected by the Board of Directors by its order dated 20-04-1999. Neither the Disciplinary Authority nor the Appellate Authority has considered the evidence on record independently. They have failed to give adequate reasons for accepting the findings of the Enquiry Officer. The findings of of the Enquiry Officer are perverse and are not supported by any legally admissible evidence and therefore, is liable to be set aside. The basis of charges mainly related to the identity of beneficiaries. But the respondent has failed to examine the said witnesses which vitiates the enquiry proceedings itself. Moreover, the charge memo was not accompanied either by list of documents relied upon or list of witnesses and their statements. In consequence, the petitioner was denied and an adequate opportunity to defend himself, which is in violation of principles of natural justice. The Enquiry Officer failed to conduct the enquiry in a fair manner. He permitted the Respondent to mark the statements of witnesses. (M.E. 4/1 to 4/9) but the authors of the statements were not examined. Hence, the enquiry proceedings is arbitrary and unlawful. The Enquiry Officer failed to appreciate that there was no complaint either from the suppliers or from the persons who availed the loans about any alleged payment of illegal gratification. The Enquiry Officer has largely and substantially relied upon the hearsay evidence of the Inspector Sri K. Balachandran, from the Head Office. As such the findings of the Enquiry Officer are unsustainable in law. The Enquiry Officer has also failed to consider the fact that certain statements of the witnesses which were produced by the Respondent at the time of enquiry did not contain the signature of the Inspector Mr. K. Balachandran, which clearly proves that depositions were not obtained directly from the Loanees and the same has been concocted by the respondent for the purpose of creating charges against the Petitioner. But the Enquiry Officer has failed to appreciate this fact which would be fatal to the case of prosecution. The Enquiry Officer failed to consider the documents (statements of the Loanees) marked by the Petitioner at the time of enquiry in defence and rejected the same merely because it was addressed to him. The aforesaid action of the Enquiry Officer is arbitrary and unlawful. The Respondent has mechanically relied upon the findings of the Enquiry Officer and failed to assess the evidence on record in an independent and objective manner. The Respondent has also failed to consider the representation dated 1-11-97 given by the concerned workman to their show-cause notice dated 16-10-1997. They have imposed penalty of stoppage of three annual increments with cumulative effect without giving adequate reasons for agreeing the findings of the Enquiry Officer. Hence, the order of penalty passed by the Respondent is liable to be set aside. The Respondent has failed to consider the past record of service of the concerned workman before imposing the penalty of stoppage of increment. The concerned workman has put more than 12 years of service and has blemishless record of service. The Appellate Authority has failed in its duty to assess

the evidence independently and to consider the contentions of concerned workman in a fair and just manner. The Appellate Authority has also failed to give adequate reasons in rejecting the appeal. Hence, the Appellate Order is liable to be set aside. Therefore, the Petitioner raised a dispute by filing a petition for reconciliation before the Assistant Labour Commissioner, Madurai. The Conciliation Officer having failed in his conciliation attempt submitted a failure report dated 3-3-2000 which followed by a Government reference for this industrial dispute for adjudication by its order dated 27-9-2000. Hence, it is prayed that the Court may please be set aside the order of penalty of stoppage of three annual increments with cumulative effect passed by the Respondent dated 19-5-1998 and the Appellate Order dated 20-4-99 against the concerned workman and consequently direct the Respondent to refund the sum deducted from the concerned workman's pay and allowances with interest @ 18 per cent per annum and thus render justice.

3. The averments in the Counter Statement filed by the Respondent are as follows :—

The domestic enquiry conducted by the Enquiry Officer was fair and proper. The allegation to the contrary that the domestic enquiry was conducted in a prejudiced manner in violation of principles of natural justice is denied. The domestic enquiry against the Petitioner was conducted by the Enquiry Officer by giving sufficient opportunity to the Petitioner to cross-examine the Management witnesses, to present defence Exhibits to examine defence witnesses and to submit the defence arguments. The Enquiry Officer after analysing of both sides Exhibits and arguments has given his findings as required. The disciplinary authority perused all the records relating to the charge sheet, both sides Exhibits and evidence of witnesses and arguments submitted by both sides, Enquiry Officer's findings and Petitioner's reply to the show cause notice before giving the final order. The Board also examined all the evidences available in record, the findings of the Enquiry Officer, show cause notice, Petitioner's reply to the show-cause notice final order issued by the disciplinary authority and appeal made by the Petitioner before passing the Appellate Order. The Enquiry Officer has given his findings based on evidences which are necessary to prove the charges and evidences which are admissible in the enquiry. In the enquiry, the investigation officer has examined Exhibit MW1 to confirm the verasity of the statements received from the borrowers and has cross-examined the Petitioner, but would not sake the credibility of the witness. In the domestic enquiry, hearsay evidence is also acceptable. During enquiry the Management produced all the Exhibits which were relied upon to issue the charge sheet and those documents were examined by the Petitioner before accepting them. Witnesses produced by the Management in the enquiry were cross-examined by the Petitioner. The Petitioner was given an opportunity to produce defence Exhibits and defence witnesses So, Petitioner's allegation that he was not given adequate opportunity to defend himself is not maintainable. The Enquiry Officer as MW1 has confirmed the investigation report, Management Exhibit M4 and the veracity of its enclosures, statements given by the loanees. The Petitioner has also cross-examined that witnesses. In domestic enquiry, preponderance of probability is sufficient to establish that charges. Only after carefully considering both Management and defence sides evidence and arguments, the Enquiry Officer held the charge as proved. The charge sheet issued was after the outcome of investigation, during which loanees have state about the deduction of 10 per cent loan amount while disbursing the loan amount. The Enquiry Officer after considering the totality of all the evidences only held that the charge is proved. The Petitioner did not seriously object the Management's witnesses, evidences and Exhibit produced by him. The Petitioner in collusion with Sri Arumugam, Manager disbursed the loans to the loanees, after deducting 10 per cent of the loan amount and utilised 10 per cent share of the loan benefit. The Manager Sri Arumugam was dismissed from service and the Petitioner was given lesser punishment for which he must thank is star. The Enquiry Officer rejected the letters written by the loanees which were produced by the defence counsel. They were addressed to the Enquiry Officer and were obtained and produced by the Petitioner, instead of parties themselves come in person to give evidence before the Enquiry Officer and thereby giving an opportunity to cross-examine them by the Presenting Officer. The Enquiry Officer rejected those statements as they might be produced in person by enquiry or sent through post. The Respondent submits that the Petitioner was charge sheeted for the serious misconduct and punished for the same. He cannot be exonerated from the serious lapse such as illegal gratification, even if his past record is blemishless. However, only considering the past services, the disciplinary authority awarded lesser punishment though lapse committed by the Petitioner is serious in nature and warrants deterrent punishment. The Appellate Authority in its order has clearly analysed the evidence relied upon the Management the reasons for which the Enquiry Officer did not accept the statements of loanees produced by the Petitioner. In case this Hon'ble Tribunal comes to the conclusion that the domestic enquiry conducted is not fair and proper, the Bank may be permitted to produce fresh evidence to establish the charges. In case, the Tribunal also comes to the conclusion that the findings of the Enquiry Officer are perverse, then also the Bank must be given a chance to establish the charges before this forum Hence this Hon'ble Tribunal may please be dismissed the petition.

4. When the matter was taken up for enquiry, no own evidence has let in on either side. The documents for either side were marked by consent as W1 to W9 and M1 to M4. Arguments advanced by learned counsel of either side were heard.

5. The point for my consideration is (1) whether the findings of the Enquiry Officer in his report Ex. W1 are valid, acceptable as legal evidence and whether the conclusion of the Enquiry Officer in his report that the charge is deemed proved in view of the preponderance of probability, and (2) whether the action of the Chairman, Pandyan Grama Bank, Virudhunagar, in stopping three annual increments

with cumulative effect to Sri V. Naganathan, Cashier of the Bank was legal and justified? If not, to what relief the concerned workman is entitled to ?

6. This dispute is with regard to the action taken by the Chairman, Pandyan Grama Bank, Virudhunagar, the Management in stopping three annual increments with cumulative effect to Sri V. Naganathan, Cashier of the Bank. The claim of the Petitioner in this industrial dispute the General Secretary of Pandyan Grama Bank Employees Association, Virudhunagar, espousing the cause of the aggrieved workman that the action of the Management against the workman concerned is illegal and unjustified. It is submitted that the concerned workman had joined service in the Respondent bank as Clerk-cum-Cashier. A charge memo dated 12-05-95 was issued by the II Party Management,Respondent. A xerox copy of the same is Ex. W1. It is alleged in the charge sheet dated 12-12-95 that the workman concerned had demanded and accepted 10% of the loan amount as illegal gratification along with the Field Officer Sri Sutha Bommaiyan and the Branch Manager Sri O. Arumugam, while disbursing of five small loans and seventeen charcoal loans to different borrowers during the period December, 1993 to March, 1994. For which the concerned workman has submitted his representation dated 23-1-96 and the xerox copy of the same is Ex. W2. In that he has submitted his explanation denying all the charges so an enquiry was held appointing an Enquiry Officer to enquire into the allegations in the charge sheet. Accordingly, the Enquiry Officer Sri D. Kathiresen has conducted the domestic enquiry and one Sri. R. Nedunchezhian was Presenting Officer on behalf of the Management and one Sri P. Viswanathan, defence counsel had taken part in the domestic enquiry with the chargesheeted employee. A xerox copy of the proceedings of that Enquiry Officer is Ex. W3. On conclusion of the enquiry, the Enquiry Officer has submitted his report with his findings holding that the charge is deemed proved in view of the preponderance of probability. A xerox copy of the Enquiry Officer's report is Ex. W4. Subsequently, a show-cause notice under charge sheet and on the Enquiry Officer s report with his finding dated 16-10-97 was issued to the concerned workman, the charge-sheeted employee. A xerox copy of the same is Ex. W5. For that show-cause notice, the concerned workman has submitted his explanation dated 1-11-97 and a xerox copy of the same is Ex. W6. In that he has stated that the Enquiry Officer has not found that the charge was proved beyond doubt and was stated only deemed proved and hence he may be acquitted from that charge. Then the Disciplinary Authority has passed a final order dated 19-5-98 awarding punishment of stoppage of three annual increments with cumulative effect to Mr. V. Naganathan in terms of Regulation 30(1)(b) of Pandyan Grama Bank (Staff) Service Regulations, 1980. A xerox copy of that final order dated 19-5-98 is Ex. W7. Against that final order, the workman concerned preferred an appeal before the Appellate Authority and a xerox copy of that appeal is Ex. W8. The Appellate Authority rejected the appeal on their opinion that punishment imposed by the Disciplinary Authority was not harsh on the appellant and confirmed the punishment. A xerox copy of the order dated 20-4-99 of the Appelate Authority is Ex. W9. On the side of the Management, four documents were marked as Ex. M1, M2 series, M3 and M4. Ex. M1 is the xerox copy of the reply dated 11-7-97 given by the the concerned employee for the charge sheet dated 12-12-95. Ex. M2 series are the xerox copies of ten documents filed before the Enquiry Officer on the side of the Management during domestic enquiry as Ex. ME5 to ME12. Ex. M3 is the xerox copy of certificate issued by the Manager of Parthibanoor Branch of Pandyan Grama Bank dated 28-5-96. Ex. M4 series is the original of Enquiry Proceedings No. 1 to 6. The main contention of the Claimant is that the Enquiry Officer conducted the enquiry in a prejudiced manner in violation of principles of natural justice. At that he, without assessing the records in an impartial manner, held the workman guilty of the charges, that the findings of the Enquiry Officer are perverse and are not supported by any legally admissible evidence, that the Enquiry Officer has largely and substantially relied upon the hearsay evidence of Inspector Mr. K. Balachandran from Head Office, hence his findings are unsustainable in law; that the charge memo was not accompanied either by list of documents or list of witnesses and their statements and thereby the Petitioner was denied adequate opportunity to defend himself which is in violation of principles of natural justice and that the Enquiry Officer failed to conduct the enquiry in a fair manner and permitted the Respondent to mark the statements of witnesses ME4|1 to 4|9, but the authors of the statements were not examined and hence, the enquiry proceedings are arbitrary and unlawful. The learned counsel for the Petitioner has reiterated the same in his arguments. He has stated further that at the time of enquiry, the Enquiry Officer failed to consider the statements of the loanees sought to be marked by the concerned workman in the enquiry in defence and rejected the same because it was addressed to him, hence the action of the Enquiry Officer is arbitrary and unlawful. He further argued that without giving adequate reasons, the respondent has mechanically relied upon the findings of the Enquiry Officer and has not independently assessed the evidence and the representation given by the concerned workman to the show cause notice, and the penalty was also imposed without giving adequate reasons and without considering the past record of service of the concerned workman which is blemishless and hence the findings of the Enquiry Officer in his report has to be set aside and the penalty imposed by the disciplinary authority, which is subsequently confirmed by the Appellate Authority is also to be set aside. In support of his argument, he has cited a case reported as AIR 1972 SC 330 stating that though the Evidence Act is not applicable to the Industrial Tribunals that does not mean that where issues are seriously contested and have to be established and proved the requirements relating to proof can be dispensed with. In the cited case, the Hon'ble Supreme Court has held that "the application of principles of natural justice does not imply that what is not evidence can be acted upon. On the other hand, what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross examinaiton by the party against whom they are sought to be used. If a letter or other document is produced to establish some fact which is relevant to the enquiry,

the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this effect. This is both in accord with principles of natural justice and also according to the procedure under order III Civil Procedure Code and the Evidence Act, both of which incorporate these general principles." This decision of the Hon'ble Supreme Court is squarely applicable to the facts of this case. In the domestic enquiry, the Management has let in documentary evidence as ME3 to ME12. Xerox copy of the same has been marked as Ex. M2 series. The document marked as ME3 before the Enquiry Officer is an inspection report furnished by the investigating Officer Mr. K. Balachandran along with 12 depositions. None of those deponents have been examined the witnesses on the side of the Management before the Enquiry Officer during domestic enquiry. It is mentioned in the Enquiry Officer's report that those deponents are prevented by the chargesheeted employee from appearing for the enquiry by threatening them with dare consequences. But the Enquiry Officer in his report stated that while perusing the depositions given by the loanees ME 3|1 to 12, they were very much forced to give 10% of their loan amount to the branch officials that too was deducted at the counter itself by the Cashier while paying Pay Order or through Saving Bank Account and ultimately he has come to a conclusion that in view of the preponderance of probability, the charge is deemed proved. From this, it is evident that persons who have given statements before the investigating officer, during his investigation as aggrieved persons were not produced before the Enquiry Officer. Those deponents have not been examined before the Enquiry Officer to speak about the contents of the statements said to have been given before the investigating Officer and thereby subjected themselves for cross-examination by the defence in the enquiry. A reason has been given in the Enquiry Officer's report that those deponents were threatened by the chargesheeted employee with dare consequences and that was why there were not able to be produced before the Enquiry Officer to speak about the statements they gave to investigating officer MW1. But the alleged fact that the chargesheeted employee had threatened those loanees and prevented them from coming and giving evidence before the Enquiry Officer has not been established before the Enquiry Officer by substantial evidence, as it is seen from his report. Under such circumstances, it can be clearly stated that the reliance made by the Enquiry Officer on the basis of the statements of the loanees who were not examined the witnesses for the Management before him is incorrect, as it is mentioned in the decision of the Hon'ble Supreme Court cited above. Those materials cannot be relied upon to establish the contested fact that deduction of 10% of the loan amount was made as a bribe by the chargesheeted employee, and the then Manager of the Bank. So under such circumstances, it can be held that the findings of the Enquiry Officer is perverse and not supported by any legally admissible evidence as stated by the Petitioner in the Claim Petition and argued by the learned counsel for the Petitioner.

7. The learned counsel for the Petitioner argued that in such cases, the Tribunal can disregard the findings of the Enquiry Officer, if they are perverse. In support of his argument, he has quoted a decision of the Supreme Court reported as AIR 69 SC 983. In that judgement, how the perversity has to be tested by the Tribunal has been stated. It is held in that judgement that "Tribunal can disregard the findings of the Enquiry Officer, if they are perverse. When an Industrial Tribunal is asked to give its approval to an order of dismissal under section 33(2)(b) of the Act, it can disregard the findings given by the Enquiry Officer, only if the findings are perverse. The test of perversity is that the findings may not be supported by any legal evidence at all. The cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the Tribunal or the two instances where the findings of the domestic Tribunal like Enquiry Officer dealing with disciplinary proceedings against the workman can be interfered with by the Tribunal, in each of those cases, the findings can be treated as perverse." It is further held in that Supreme Court judgement that "it has nowhere been laid down that even substantive rules which would form part of principles of natural justice, also can be ignored by the domestic Tribunals. The principle that a fact sought to be proved must be supported by the statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles, which cannot be ignored on the mere ground that domestic Tribunals are not bound by the technical rules of procedure contained in the Evidence Act. This decision also squarely applicable to the facts of this case. Under such circumstances, I am inclined to accept the arguments advanced by the learned counsel for the Petitioner that Enquiry Officer's findings given in his report that in view of the preponderance of probability, the charge is deemed proved is perverse and not supported by any legally admissible evidence and hence, it is liable to be set aside. In view of this finding, that the subsequent action taken by the Management through the Disciplinary Authority by imposing penalty on the concerned workman by stoppage of three annual increments with cumulative effect and which is subsequently confirmed by the Appellate Authority cannot also be sustained as correct. So under such circumstances, it can be held that the action of the Chairman, Pandyan Grama Bank, Virudhunagar in stopping three annual increments with cumulative effect to Sri V. Naganathan, Cashier of the Bank is illegal and unjustified and the concerned workman is entitled to the relief as prayed for, except the interest claim @18% per annum. Thus, I answer the point accordingly.

8. In the result, an award is passed holding that the order of stoppage of three annual increments with cumulative effect of Sri V. Naganathan, Cashier of the Respondent bank by the Management is unjustified and the same is set aside, with a direction to the Management of Pandyan Grama Bank, Virudhunagar, to refund the sum deducted from the concerned workman's pay and allowances. No Cost.

(Dictated to the Stenographer and transcribed and typed by him and corrected and pronounced by me

in the open court on this day, the 13th February, 2001).

K. KARTHIKEYAN, Presiding Officer

Witnesses examined on either side : Nil.
Documents Marked:
FOR CLAIMANT:

Ex. No.	Date	Discription
W1	12-12-1995	Xerox copy of the chargesheet issued to the I Party by the Management.
W2	23-01-1995	Xerox copy of the representation from the I Party to the Management.
W3	25-04-1996	Xerox copy of the proceedings before the Enquiry Officer.
W4	14-06-1997	Xerox copy of the Enquiry Report.
W5	16-10-1997	Xerox copy of the show cause notice.
W6	01-11-1997	Xerox copy of the representation of the I Party to the Management.
W7	19-05-1998	Xerox copy of the Final Order of the Respondent.
W8	01-06-1998	Xerox copy of the appeal before the Board of Directors of Respondent.
W9	20-04-1999	Xerox copy of the order of Appellate Authority addressed to the I Party.

FOR RESPONDENT :

M1	11-07-1997	Xerox copy of the reply to the charge sheet from the I Party to the Management.
M2		Xerox copy of the Investigation Report along with its enclosures.
M3	28-05-1996	Xerox copy of the letter from the Respondent bank to Parthibanoor Branch.
M4		Original Enquiry Register.

नई दिल्ली, 21 मार्च, 2001

का. आ. 772.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ ट्रावनकोर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण कोलम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-2001 को प्राप्त हुआ था ।

[सं. एल-12012/83/99-आई आर (बी-I)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 21st March, 2001

S.O. 772.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the awrd of the Industrial Tribunal Kollam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Travancore and their workman, which was received by the Central Government on 20-3-2001.

[No. L-12012/83/99-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, KOLLAM

(Dated, this the 20th day of February, 2001)

PRESENT:

Sri P. V. Abraham, Industrial Tribunal.

IN

Industrial Dispute No. 48/99

BETWEEN

The Managing Director, State Bank of Travancore, Head Office Poojappura, Trivandrum.

AND

The General Secretary, State Bank of Staff Union (Regd.) P.B. No. 5601, Trivandrum.

AWARD

The Government of India as per Order No. L-12012/83/99/IR (B-I) dated 9-9-1999 referred this industrial dispute for adjudication to this Tribunal.

The issue referred for adjudication is the folowing:

"Whether the action of the management of State Bank of Travancore in denying the post of Computer Operator to Smt. R. Geetha Kumari, Typist-clerk is justified? If not, to what relief she is entitled to ?"

2. The union has contended that the management had issued circular dated 28-4-1994 prescribing the qualification and method of selection and appoint of computer operators. As per that circular the names of employees satisfying the eligibility criteria were advised to be forwarded to the Head Office on or before 15-5-1994. The list of eligible employees for selection to the post of computer operators were published by the management on 8-5-1996. As per the circular mentioned above, the selection to the post of computer operator had to be made through an aptitude test followed by an interview. The aptitude test was conducted on 19-1-1997. A Districtwise panel of successful candidates for the State of Kerala and a centrewise panel for outside Kerala State were prepared and published on 30-6-1997. The panel was prepared senioritywise from among those who qualified in the written test. The postings had to be done districtwise on the basis of option. Smt. Geetha Kumari was working at Pandalam branch in Pathanamthitta District at the time of the written test. She was successful in the test and her name was included as item No. 8 in the Districtwise panel of Pathanamthitta. Subsequently the options were called from the eligible persons in the panel to be posted in the notified vacancies in Pathanamthitta District. Smt. Geetha Kumari submitted her option and was identified to be posted at Pathanamthitta branch based on her seniority. In the menantime she was transferred to Nooranad branch in Alleppey District as Typist/clerk on the basis of her request submited earlier. There is no

condition prescribed in the circulars issued by the bank to the effect that an employee would become ineligible to the post of computer operator if she was transferred out of the District. Smt. R. Geetha Kumari had satisfied all the conditions prescribed by the management bank regarding the posting of computor operators and she was selected and included in the panel of eligible employeess to be posted as computer operators. However they had not appointed her as computer operator at Pathanamthitta branch and in her place another junior employee was posted as computer operator in that branch. According to the union, the denial of posting of Smt. Geetha Kumari as computer operator by the management is without any justification. In the circumstances the union seeks to pass an award directing the management to appoint Smt. Geetha Kumari as computer operator at Fathanamthitta branch of the management bank.

3. The management has contended that in terms of the agreement entered into between the recognised union and the bank, the panel of computer operators was prepared Districtwise, Smt. Geetha Kumari was working at Pandalam branch when the option for the posting of computer operators was called for by the bank. She gave the option on 20-1-1998 but she had submitted a request on 30-5-1997 requesting to transfer her to Nooranad branch. On the basis of her request she was transferred to that branch. Since the panel for each District was based on seniority within that District Smt. Geetha Kumari lost her chance to be considered for posting as computer operator due to her transfer and therefore she could not be considered for posting as computer operator. In the circumstances the management contends that Smt. Geetha Kumari is not eligible for posting as computer operator.

4. There is no dispute that the post of computer operators in different branches of the management bank had to be filled up from the panel of employees prepared after selection. In the selection Smt. Geetha Kumari had participated and she was included in the select list prepared for the Pathanamthitta District. On 20-1-1998 Smt. Geetha Kumari had submitted her option for appointment as computer operator at Pathanamthitta branch of the management bank. Even though Smt. Geetha Kumari had submitted a transfer request to Nooranad branch at Alleppey District on 30-5-1997, she was actually transferred to Nooranad branch only on 21-1-1998. Therefore, Smt. Geetha Kumari was transferred out of Pathanamthitta District as Typist/clerk only after preparation of the select list to the post of computer operator for Pathanamthitta District and after she had submitted her option for appointment as computer operator at Pathanamthitta branch of the management bank. Ext. W1 circular issued by the management prescribes the eligibility criteria and method of selection, appointment and other conditions for appointment to the post of computer operators in different branches of the management bank. Ext. W1 does not say that an employee who has already been selected for appointment to the post of computer operator and included in the select list will become ineligible for appointment to that post if she is transferred to a branch outside the District in which she has been working when the panel was prepared. The management has also not produced any other documents to show that if an employee whose name is include in the panel for the post of computer operator is transferred to a branch outside the District will become ineligible to the post of computer operator. In the circumstances I am of opinion that there was no justification for the management in not appointing Smt. Geetha Kumari as computer operator at Pathanamthitta branch of the management bank.

5. The management has stated in the written statement that in the place of Smt. Geetha Kumari, Sri. Vijaya Kumar, the next senior most employee from the panel was posted as computer Operator at Pathanamthitta branch. However, the union has not taken any steps to implead Sri Vijaya Kumar in this industrial dispute. As Sri. Vijaya Kumar has not been afforded an opportunity for hearing, it is not proper to issue any direction which may adversely affect him. In the circumstances the management is directed to post Smt. Geetha Kumari as computer operator at any of the branches at Pathanamthitta District in the next arising vacancy. It is made clear that Smt. Geetha Kumari is eligible to reckon her service as computer operator w.e.f. the date on which Sri Vijaya Kumar was appointed as computer operator and she will also be eligible for restoration of her seniority over her juniors in the post of computer operator. However she will not be eligible for any monetary benefits for the post of computer operator till the next vacancy of computer operator arises at Pathanamthitta District.

P. V. ABRAHAM, Industrial Tribunal

Witness examined on the side of the Management:

MW1.—Nil.

Witness examined on the side of the Workman

WW1.—Nil.

Documents marked on the side of the management :

Ext. M1 : Request dated 30- -1997 submitted by Smt R. Geetha Kumari.

Ext. M2 : Letter of option dated 20-1-1998 submitted by Smt. R. Geetha Kumari.

Ext. M3: Photostat copy of letter dated 30-3-1998 sent by showing office Kottayam advising Pandalam branch about the posting of Smt. Geetha Kumari as computer operator at Pathanamthitta branch.

Documents marked on the side of the Workman:

Ext. W1 : Photostat copy of circular dated 28-4-1994 issued by the management.

Ext. W2 : Photostat copy of circular dated 8-1-1997 issued by the management.

Ext. W3 : Circular dated 30-6-1997 issued by the management.

नई दिल्ली, 21 मार्च, 2001

का. आ. 773.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय

जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20 3 2001 को प्राप्त हुआ था ।

[सं. एल-12012/52/88डी-III (ए)/आई आर (बी-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 21st March, 2001

S.O 773.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Indore and their workman, which was received by the Central Government on 20-3-2001.

[No. L-12012/52/88-D-III(A)/IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No. CGIT/LC/R/23/90

Presiding Officer : Shri K. M. Rai.

Shri Ratan Kumar Gupta,
S/o Shri Asha Ram Gupta,
C/o Pooja Chemist,
Pipal Chouroaha,
R/o Ambah,
District Morena. ..Applicant.

Versus

The Regional Manager,
State Bank of Indore,
Regional Office,
Gandhi Road,
Modi House, Gwalior. ..Non-applicant.

AWARD

Passed on this 2nd day of March, 2001

1. The Government of India, Ministry of Labour, vide order No. L-12012/52/88-D.III(A) dated 22-1-90 has referred the following dispute for adjudication by this tribunal—

"Whether the action of the management of State Bank of Indore, Gwalior in not providing employment to Shri Ratan Kumar clerk-cum-cashier after the 4-3-83 and whether his termination is justified ? If not, what relief the workman is entitled for ?"

2. The case for the workman is that he was appointed as clerk-cum-cashier by the management on 20th December, 1982 on the post of a clear vacancy. His services were terminated on 4-3-83 without giving one months notice or retrenchment compensation by the management. After the termination of the workman, Ku. Usha Dubey was given employment in his place by the Bank. The workman made representation to the Bank Manager but no action was taken in respect thereof. He was not appointed on any leave vacancy. The management has violated the provisions of bipartite settlement and awards in terminating the services of the workman. His appointment was for a period of 75 days. His case is governed by the provisions of Sections 25-G and H of I.D. Act, 1947. His services had been illegally terminated by the management and, therefore, he is entitled to reinstatement with back wages.

3. The case for the management is that the workman was temporarily appointed as clerk-cum-cashier at Amba branch for a specific period of 75 days from 20-12-82 to 4-3-83. He was given the written appointment order indicating the terms and conditions therein. The workman was not appointed against any clear vacancy. Shri A. K. Chandil, the permanent clerk-cum-cashier has resigned from the Bank and therefore, workman was given a temporary appointment for a specific period of 75 days in his place. The recruitment in the clerical cadre of the Bank to fill permanent vacant post is done through Banking Service Recruitment Board only according to recruitment rules. The workmen appointment came to an end automatically on the day his period of appointment came to an end. In view of the bipartite settlement of 1966, the workmen could not be given temporary appointment for more than 3 months. No temporary appointment was done at the Amba branch during the year 1985-86. The workman cannot get any benefit of the provisions of Sections 25-G and H of I.D. Act, 1947. He was never retrenched by the management. He was not in continuous service for one year nor he had served for a period of 240 days in 12 calendar months. His services were not terminated in contravention of any award or settlement as alleged by him. The workman is not entitled to any claim as claimed by him.

4. The following issues arise for decision in this case—

1. Whether the workman is entitled to reinstatement with back wages ?

2. Relief and costs ?

5. Issue No. 1: Admittedly the workman was temporarily engaged by the management for a fixed period of 75 days to perform the duty of clerk-cum-cashier. This appointment was done in leave vacancy. After the expiry of the period, the workman was disengaged by the Bank. In this connection it was vehimentaly argued by the learned counsel for the workman that the case of workman is covered under the provisions of Sections 25G and H of I.D. Act, 1947. In this connection, I would respectfully differ from the argument of the learned counsel for the workman. The workman never continuously worked for 240 days in a calendar year preceding the date of termination of service. In view of this fact, it cannot be said that he was retrenched from service as it is clear from the provisions of Section 25F and Section 25B of the I.D. Act, 1947.

6. For the regular appointment to the post of cashier-cum-clerk, the provisions of recruitment rules had to be followed. In the instant case, the workman was never selected by the Banking Recruitment Board for the appointment to the said post according to the recruitment rules. No temporary employee can claim

his right to the post without following the recruitment rules regarding the selection to the post of clerk in the Bank. The appointment to the post of clerk in the Bank through back door entry has been depricated by the Apex Court also. In such a circumstance, the workman has no right to the post of cashier-cum-clerk merely by working for a period of 75 days in the Bank in the leave vacancy only. In view of this fact also it cannot be held that the workman was retrenched from service. If there was no retrenchment, then he is not entitled to any relief under the provisions of I.D. Act 1947.

7. The workman has not beenable to establish by satisfactory evidence that any other new persons were appointed as cashier-cum-cl... by the bank after he was disengaged from service. The heavy burden lay on the workman to prove this fact to strengthen his case. He has miserably failed to establish it. This fact also goes to show that the workman was never retrenched from service as per the provisions of Sec. 25F of the I.D. Act, 1947.

8. In view of the foregoing reasons, it is held that the workman was not retrenched by the Bank. He is therefore, not entitled to reinstatement with back wages. Issue No. 1 is answered accordingly.

9. Issue No. 2: In view of my findings given on Issue No. 1, the workman is not entitled to any relief as claimed by him. The reference is accordingly answered against the workman and in favour of the management.

10. Copy of the award be sent to the Ministry as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 21 मार्च, 2001

का. आ. 774.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दुर्ग राजनंद गांव ग्रामीण बैंक के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 20-3-2001 को प्राप्त हुआ था।

[सं. एल-12012/34/93-आई आर (बी-I)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 21st March, 2001

S.O. 774.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, Jabalpur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Durg Rajnandgaon Gramin Bank and their workman, which was received by the Central Government on 20-3-2001.

[No. L-12012/34/93-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Case No. CGIT/LC/R/114/93

Presiding Officer.—Shri K. M. Rai.

Shri Yaswant Rao Wairagadey,
S/o Shri Sunderlal Wairagadey,
Village & P.O. Dangar,
Block Mohla,
Distt. Rajnandgaon. ..Applicant

Versus

The Chairman,
Durg Rajnandgaon Gramin Bank,
MP Housing Board,
GE Road,
Rajanandgaon. ..Non-applicant

AWARD

Passed on this 5th day of March, 2001

1. The Government of India, Ministry of Labour vide order No. L-12012/34/93, I.R. (B. I) dated 8-6-92 has referred the following dispute for adjudication by this tribunal—

"Whether the action of the management of Durg Rajnandgaon Gramin Bank in terminating the services of Shri Yaswant Rao Wairagadey w.e.f. 1-10-89 is legal and justified? If not, to what relief the workman is entitled to and from which date?"

2. The case for the workman is that he was employed as messenger-cum-cleaner on daily wage basis by the management in Dhangarh branch w.e.f. 1-10-89. Without conducting any enquiry and serving any chargesheet the management stopped him from performing his duty w.e.f. 1-10-89. No written order was given to him by the management in respect to discontinuing his service. In this way the management acted in violation of the rules and principles of natural justice in ending his services without assigning any reason in respect thereof. Inspite of several representations, the management did not allow him to perform his duty. The order of the management is illegal and therefore deserves to be queshed. He is entitled to reinstatement with back wages.

3. The case for the management is that the workman was engaged temporarily on daily wage basis as messenger-cum-cleaner. He was appointed to perform the duty temporarily in place of the workman who was performing the said duty and was placed under suspension by the management from 6-8-88. In this way it was stop gap arrangement for carrying on the work of messenger-cum-cleaner at Dhangarh branch. The regular appointment in the Bank for any post is done according to the recruitment rules for which the vacancy is modified and the name is sponsored through local Employment Exchange. In the instant case the appointment of the workman was not done according to the recruitment rules. At the same time, his name was not sponsored by the local employment exchange. The appointment of the workman was for a temporary period and there-

fore his services were discontinued w.e.f. 1-10-89 legally. In this case the departmental enquiry for discontinuing the services of workman was not required at all.

4. The management further alleges that discontinuation of workman's service does not amount to retrenchment according to the provisions of industrial Dispute Act 1947. The workman had never continuously worked for 240 days in a calendar year during the employment. In view of all these facts the workman is not entitled to any relief as claimed by him.

5. The following issues arise for decision in the instant case—

1. Whether the management has illegally discontinued the service of workman w.e.f. 1-10-89 ?
2. Whether the workman is entitled to reinstatement with back wages ?
3. Relief and costs ?

6. Issue No. 1.—It is an admitted fact that the workman was employed temporarily on daily wage basis as messenger-cum cleaner by Durg Rajnandgaon Gramin Bank w.e.f. 1-1-88. His services were discontinued w.e.f. 1-10-89. The workman has admitted in his statement that no vacancy for the regular appointment to the post of messenger-cum-cleaner in the Bank was notified and his name was not sponsored through the local employment exchange. He had not applied for the appointment as messenger-cum-cleaner in Dungarh branch of thte Bank. He was not issued any written appointment order by the Bank For the regular appointment to the said post, the recruitment rules had to be followed by the Bank. In the instant case, no mendatory provisions of recruitment rules were followed by the bank in giving the employment to the workman for the post of messenger-cum-cleaner. The workman was not interviewed by the Bank for , selection to the said post. His name was not even registered in the employment exchange as he has admitted in his statement. Without following the recruitment rules, no person can get employment for any post in the Bank. If any appointment is done in contravention of the recruitment rules, then such appointment is void-ab-initio and therefore no person can claim his right to the post.

7. The workman has also not been able to approve that he had continuously worked for a period of 240 days in the preceding 12 calendar months from the date of discontinuation of his service. In view of this fact, he was not required to be served with one month notice prior to discontinuation of his employment. He was also not required to be paid any retrenchment compensation by the management. In this way the management has not contravened the provisions of Section 25-F of the Industrial Dispute Act, 1947.

8. In the light of foregoing reasons, the workman is not entitled to get a regular appointment to the post of messenger cum-cleaner in Durg Rajnandgaon Gramin Bank as claimed by him. For the appointment to the said post, the recruitment rules have to be strictly followed. In this case, the workman wants to get regular appointment through back door entry which is not permissible under law. The discontinuation of the workman's service is in no way illegal.

9. Issue No. 2.—In view of my findings given on Issue No. 1, the workman is not entitled to reinstatement with back wages. This issue is answered accordingly.

10. Issue No. 3.—On the reasons stated above, the workman is not entitled to any relief as claimed by him. The reference is accordingly answered in favour of the management and against the workman.

11. Copy of the award be sent to the Government of India, Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 21 मार्च, 2001

का. आ. 775.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण न. 1, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-2001 को प्राप्त हुआ था ।

[सं. एल-12011/01/88-डी-II (ए)/आई आर (बी-III)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 21st March, 2001

S.O. 775.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. I, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 20-3-2001.

[No. L-12011/01/88-D-II(A)/IR-(B-III)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1) AT DHANBAD

PRESENT :

Shri Sarju Prasad, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 149 of 1991

PARTIES :

Employers in relation to the management of State Bank of India

AND

Their workmen.

APPEARANCES :

On behalf of the workmen—Shri G. K. Verma, General Secretary, State Bank of India Employees Union.

On behalf of the management—Shri A. K. Gupta, Authorised Representative.

STATE : Bihar. INDUSTRY : Banking

Dhanbad, dated the 2nd March, 2001

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12011/1/88-D. II(A)/I.R. B-III dated 10-1-92.

SCHEDULE

"Whether the demand of the undermentioned 5 workmen for permanent absorption in the subordinate cadre of the Bank with retrospective effect is justified ? If so, the extent of relief payable to the workmen may be indicated ?

NAME OF THE WORKMEN

1. Shri Lalan Ram.
2. Shri Dilip Kumar Pal.
3. Shri Rakesh Kumar.
4. Shri Kailash Bhagat.
5. Shri Sheo Bachan Prasad."

2. The present dispute relates to the demand of regularisation of Lalan Ram and 4 others in the employment of State Bank of India, Secretariat Branch, Patna.

3. The dispute has been raised by the State Bank of India Employees Union (Bihar State) by making a demand to regularise the concerned workmen Lalan Ram and 4 others. According to the sponsoring union the concerned persons were appointed by the management of State Bank of India, Patna Secretariat Branch on the dates mentioned against their names as under :—

Names of workmen	Dates of initial appointment
1. Sri Lalan Ram	05-05-1983
2. Sri Dilip Kumar Pal	01-06-1983
3. Sri Rakesh Kumar	01-06-1983
4. Sri Kailash Bhagat	01-01-1984
5. Sri Sheo Bachan Prasad	05-04-1984

4. According to the sponsoring union the above named employees have been continuously working at Patna Secretariat Branch of State Bank of India since their respective date of appointment. These appointments were made after interview were taken by the then Branch Manager of Patna Secretariat Branch. All these workmen worked full time at the command, control and direction of the management. They perform similar work as is done by regular Class IV employees of the Bank but they are being a very meagre daily wages. Initially they were being paid Rs. 7 per day till 27-8-84 and after that their daily wages were raised and after 30-4-90 they were being paid @ Rs. 17.50 per day although they were employed by the management of State Bank of India but their wages were being paid through name-lender contractor set up by the management with effect from 28-8-1984 and these fake contractors were paid commission @ Rs. 1 to 1.25 p. per such workmen per day. This has been done in order to avoid direct employment to the concerned persons. The fake contractor has been changed from time to time but all these persons have been regularly performing the job as that of permanent employee of the Bank. Such fake contractor namely M/s. R. K. Neogy, Narendra Kumar Singh, Ram Ekbal Sharma set up by the management do not possess any licence under contract Labour (R&A) Act, 1970 nor the establishment of the State Bank of India Secretariat Branch has been registered under Section 7 of the Contract Labour (R&A) Act, 1970. The concerned workmen are engaged in the job of messenger and also for supplying of drinking water to the employees of the Bank which is a permanent nature of job. Therefore, in view of the circular of the Bank after completion of 9 months of service they are entitled to be regularised as permanent employees of the Bank and they should have been paid similar scale of pay as that of permanent employees of Bank doing similar nature of job with the benefit of annual increment, accumulation of leave and benefit of contributory Provident Fund but the management has deprived them. Therefore, the sponsoring union has raised the dispute with the demand that the said 5 persons should be regularised in permanent employment of the State Bank of India Secretariat Branch and they should be paid arrears of difference of wages payable to permanent employees with effect from 9 months after their services and other benefits like seniority, annual increment, accumulation of leave and C.P.F. with retrospective effect.

5. The case of the management of the Bank is that the present dispute is bad because there is no relationship of employer and employee between the concerned persons and the management of State Bank of India Secretariat Branch. Further according to them the sponsoring union is not recognised union by the Bank nor the concerned persons are its members. Therefore the sponsoring union has got no locus-standi to raise the dispute of the concerned persons. According to the management the concerned persons were never employed by the Bank nor they were entrusted to perform the job as that of regular duties of subordinate cadre staff. They have not rendered 240 days of work in the Bank in any calendar year. Therefore, they are not protected under the I.D. Act and thus not entitled to be reinstated. The management has engaged contractor for removing stagnant water from the basement of premises of the Bank as there was problem of water sippage in the basement of the said branch of the Bank and the concerned persons were engaged by such contractors for temporary period. The said work of removal of stagnant water from the basement of the Bank premises was of casual nature and whenever stagnant water ceased to exist the work of the contractor also ceased. Thus there was no continuity either in the engagement of Labour Contractor or is

the work of any individual employee. There was no master and servant relationship between the management of persons engaged by the contractors for the job of dewatering of Patna Secretariat of the branch. On few occasions the management of Patna Secretariat branch has used some persons even loitering or idling near the premises of the bank for specified individual transitory work and whenever anybody was so utilised he was paid his remuneration for the specified job which also included payment of conveyances allowance. Since none of the employees working under the Labour Contractor is employee of the management they are not entitled to the remuneration or substantive absorption in the subordinate cadre of the management and therefore the demand of the sponsoring union is fit to be rejected.

6. Thus from the pleadings of the parties it is clear that the concerned persons had been working in the Bank but the real dispute is regarding the fact whether they were employed by the Bank for regular and permanent nature of work or they were employed by the contractor for casual nature of work of dewatering from the basement of the Bank premises. It is admitted that in the basement of the State Bank of India premises here was problem of sippage of water and water used to get accummulated. According to the management, the contractors were being engaged to remove the stagnant water from the premises of the Bank but according to the sponsoring union and the concerned persons for that purpose the Bank has got three pumping sets installed to remove the water from the basement for which other contractors were engaged. As a matter of fact the concerned persons were doing the job of messenger cleaning, dusting and supply of drinking water as that of permanent employee of the Bank doing the similar work but in order to camouflage the real thing the management has set up fake contractors who were simply disbursing wages to the concerned persons and realised commission @ Re. 1 to Rs. 1.25P. per labour per day. They never used to visit the Bank premises and the work of the concerned persons were being supervised by the management of the branch and they used to work as per the direction of the Bank. Thus we find that the concerned persons were working in the Bank are not disputed by the management of the bank but according to them they are contractor workers. It is admitted that the establishment of State Bank of India Secretariat Branch has not been registered under Section 7 of the Contract Labour (Regulation and Abolition) Act nor the so-called contractor possessed any licence under the said Act. The vital question to be decided in this case is whether there is relationship of employer and employee between the management and the concerned persons. The next question to be decided will be whether the demand of the sponsoring union for regularisation of the concerned persons as permanent employee with the benefits of permanent employee along with back wages and other consequential benefit is justified ?

7. Not let us see first of all whether there is relationship of employer and employee between the concerned persons and the management of State Bank of India, Secretariat Branch, Patna. The management has said that the concerned persons were engaged by the contractors from time to time for removing stagnant water from the basement of the Bank premises but the management has not filed any paper to show that any contractor was engaged. The management has also not been in a position to produce any such contract or agreement, between the contractor and the management nor they have filed any tender notice, quotations to prove that contractors were engaged by the management. Admittedly, the management's establishment is not a registered establishment for engagement of contract labour as is required under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. It is also admitted that so-called contractor do not possess any licence as required under that Act. Although the management has not filed any documentary evidence regarding or contractor nor they have produced any contractor to prove that any contract work was assigned to so-called contractors. The management has also not filed any wagesheets of the contractor regarding payment of wages to the concerned persons. As per the provision of Contract Labour (Regulation and Abolition) Act it is the duty of the principal employer to supervise the payment of wages to the contractor labourer and in case of any non-payment of wages the management is liable to make payment of wages. Therefore, the management was duty bound to supervise the payment of wages to the concerned persons if at all they were engaged by any contractor and for that there should have been wagesheets of the contractor which should have been produced to prove that the contract work was of casual nature. The sponsoring union has altogether examined seven witnesses to prove that the concerned persons Lalan Ram and 4 others were engaged by the management of the Bank and so-called contractors were fake persons and the arrangement was only to camouflage the real issue. The contractor was shame and not genuine one. WW-1 Lalan Ram, WW-3 Kailash Bhagat, WW-4 Dilip Kumar Pal, WW-5 Shee Bachan Prasad and WW-6 Rakesh Kumar are the concerned persons who have clearly stated that they were not appointed by any contractor nor they were the contract labour, rather they all have been appointed by the then Branch Manager of the Bank sometimes in the year 1983 to 1984. They all have stated that they come to the branch of the Bank to attend duty at 10.15 A.M. and leave the office after about at 5.30 to 6.00 P.M. They performed the work as allotted to them by the management of the Bank. They used to carry voucher, ledger etc. from one table to another, go to the another branch with papers and cash, fetch drinking water to the staff and officers. Their attendance is being marked in the Kuchcha registered in the office of the Bank and the so-called contractors only visit the bank once in a month who disburse their wages and gets their commission from the bank. There is a head jamadar in the Bank who distributes duty to these persons everyday and they do similar work as that of the permanent messengers. In cross-examination WW-1 has stated that he was doing the personal work of the then Branch Manager R. P. Singh. Therefore, he called him in the Bank, interviewed him and engaged him in the said work. In cross-examination it has been elicited that he is Class VIII pass from K.P.H.S. School at Dumri. Further it appears that from the evidence of the concerned person WW-3 Kailash Bhagat he has filed certain papers which have

been marked Ext. W-20 to W-22, W-28, 29, 35 series and 38 series and Ext. W-31 series. Besides that he has proved some other documents which have been marked Ext. W-40, 41. In cross-examination this witness have clearly stated that water accummulated in the basement of the Bank is extracted with the help of three motors installed by M/s. Lucky Mart whose employees ran those Motors. WW-4 Dilip Kumar Pal has also proved certain documents which have been marked Ext. W-12, 13. Similarly WW-5 Sheo Bachan Prasad has also proved certain documents which have been marked Ext. W-23 to 25 and Ext- W30 and Rakesh Kumar another concerned person has proved Ext. W-14 to Ext. W-18. All these persons stated that they do their duties in the Bank throughout the year except Sundays and Holidays. To support that these concerned persons work as Messenger the sponsoring union has examined Shri Vijay Kumar Choudhury who is a cashier in the said Bank and he has supported that the concerned persons are doing the same job as that of permanent messenger since long on permanent nature of job. Similar is the evidence of an permanent employee of the said branch of the Bank Shri K. K. Rajak. Thus apart from the fact that the concerned persons have come to state that they are working directly under the control and supervision of the management; two employees of the said Bank have also come to support their case. As against these evidence of the sponsoring union the management has examined MW-1 Shri Sunil Kumar who has said that he knows the concerned persons but he cannot say as to what sort of work they are doing. MW-2 L. N. Prasad who was Branch Manager in the said branch from August, 1984 to September, 1985 has come to say that there was works stagnation problem in the basement of the branch. The contractor was engaged and the contractor labour was engaged for removing the stagnated water and such labourers were paid by the contractor. But the management has not filed any work order even to show that any work order was given to any contractor. He has further stated that he does not remember if there was any tender paper in this regard for giving contract job or for engagement of the contractor during his period. He has clearly stated that he cannot say the name of the concerned persons. The next witness of the management is MW-3 Madhukar who was posted as A.G.M. in the said branch from 1991 to 1992. The written statement was filed under his signature. He has clearly stated that the concerned persons of the case were working in the Secretariat branch of the Bank while he was working there. During his tenure electrical Motor Pump was fitted in the said branch of the Bank for removing accummulated water and this was installed much earlier to him. The last witness of the management Shri A. P. Mukherjee who was posted in the local head Office, Patna from 1985 to 1990 as Desk Officer. He has come to say during the re-conciliation of the industrial dispute a letter Ext. W-3 was filed by the Bank in which it has been mentioned that the management will provide chance to the concerned persons for permanent absorption in future. He has further stated that circulars were issued by the Bank inviting applications from casual and temporaly workers of the Bank but the concerned persons did not apply. Therefore, they were not considered for permanent absorption but he has admitted that he was never posted at Patna Secretariat branch and he cannot say if notices or circulars were given to the concerned persons to apply for permanent absorption nor circulars were published in the general news paper. He cannot say if any applications were invited from the concerned persons or not. Thus from the own evidence of MW-3 it is apparent that the concerned persons were working in that branch of the Bank and for removal of stagnant water from the basement of the bank premises Motor Pumps were installed. The management has not provided any paper to show that any contractor was engaged for the job of dewatering stagnant water from the basement of the Bank nor they have filed any work orders to substantiate its case. On the other hand the concerned persons as well as two permanent employees of the Bank has come to say that they were not engaged by the contractor for dewatering of the staganant water rather they were doing the job of Messenger-cum-Water boy and they were sweeping, dusting the bank premises. Apart from the oral evidence the sponsoring union has brought on record Ext. W-32 series which are nine sanctioned bills of the Bank of different dates for payment to M/s. Lakkhi Furniture Mart for the instalment of Motor Pumping Set. They have also filed Ext. W-33 to WW-33/78 debit slips showing the Bank has debited hire charge of electrical motor to the aforesaid Lakkhi Furniture Mart. They have also filed another Ext. W-34 which is a sanctioned bill dt. 1-1-93 for Rs. 600 as payment for removing stagnant water through Motor Pump in the month of December of 1992 to M/s. Sundra Pati Devi. Thus these documentary evidence coupled with the admission of MW-3 it is apparent that for dewatering of the stagnant water the management of Bank has hired Motor Pumps. The sponsoring union has further filed Ext. W-5 from which it appears that the original stationery department of the Bank had sent 201 pieces of Protested Bill registers to the Secretariat branch of the Bank on 14-5-86 through Lallan Ram, concerned persons No. 1 describing him as Messenger. Ext. W-6 is a letter dt 20-6-86 of Patna Secretariat branch Manager to Circle Stationery department authorising Shri Lalan Ram to bring 4 establishment registers. Ext. W-7 is the conveyance charge paid to Lalan Ram on 12-8-86 for going to Kadam Kuan branch of State Bank of India for delivery/carrying cheques. Ext. W-8 is a letter dt. 29-8-87 of Manager, Accounts to the State Bank of India new market branch authorising Shri Lalan Ram, concerned workman No. 1 to bring weekly abstract form. Ext. W-9 is note dt. 3-2-88 of the Manager, Personnel, Banking Division of the concerned Bank authorising workman No. 1 Lalan Ram to bring 100 copies of Savings Bank Pass Book from the Manager. C.S.D. Ext. W-10 is payment of conveyance charge for taking cash from the said branch to the Bihar Vidhan Sabha Extension counter by Lalan Ram on 8-6-90. Ext. W-11 is again payment of conveyance charge to Lalan Ram on 9-6-90 for taking cash from branch to Bihar Vidhan Sabha extension counter. Ext. W-27 is Bank's I.D. Card given to Lalan Ram describing him as one of the member of the staff to be used on 21-8-86 Ext. 36 to W-36/3 are the conveyance charges paid to Lalan Ram on different dates for Bank's work. Similarly the management has filed Ext W-12, W-13, W-14, W 15, W-16, W 17, W-18 and W-37

to 37|4 to show that the Bank has deputed Dilip Kumar Pal from time to time to do certain work outside the Bank premises for which he has been paid conveyance charges. He was entrusted to carrying cash from Patna Secretariat to Bihar Vidhan Sabha Extension counter. On several occasions similarly Rakesh Kumar, Kailash Bhagat have been paid conveyance charge for which Ext. W-19, 20 to 22, 28, 29, 31 series which are in 55 pages are Peon Book showing that Kailash Bhagat has worked in the branch record room to issue and receive clean cash voucher from officers, employees of the branch between the period of 20-1-90 to 18-1-92. Ext. W-35 to W-35|6 are six conveyance charge voucher making payment to Kailash Bhagat and Ext. W-38, W-40 and W-41 are the letters and orders by which Kailash Bhagat was deputed to bring Banks transfer scroll book boxes of draft and supply of vouchers. Similarly the sponsoring union has filed Ext. W-23 24, 25 and 30 to show that Sheo Bachan Prasad was also deputed by the Bank to do different job of Messenger on different dates. Thus the documents discussed above clearly prove that the concerned persons were doing the job of messengar regularly in the secretariat branch of the Bank. The management has taken a plea that the Bank used to engage some persons loitering and idling near to the Bank to do certain work cutside the Bank for which the Bank has made payment of conveyance charge etc. This plea of the Bank is ridiculous childish and no prudent man can believe such plea. It is totally absurd and the bankruptcy of the knowledge of the management of the Bank which has taken such plea. It is very hard to believe that Bank will hand over cash and important papers for carrying from one branch to another branch by some loitering and idling persons. Therefore, it is apparent that the Bank has been taking work of messengar from the concerned persons. The management has filed attendance register of permanent employees to show that the name of the concerned persons do not find place in the attendance register of the staff maintained in the said branch of the Bank. They have also filed the ledger regarding payment of permanent employee to show that the concerned persons have not been paid through ledger. It is not the case of the sponsoring union that the concerned persons used to mark their attendance in the attendance register of the Bank nor it is their case that they were being paid through as they were made payment wages as that of permanent employees. Their specific case is that their attendance is being marked by the management or some kuchchi register and they were being paid through some fake contractors. Therefore, the documents filed by the management is of no use. The sponsoring union has filed yet another Ext W-3 which is the letter of the Bank addressed to the ALC(C) Patna at time of conciliation of industrial dispute in which it has been admitted that the concerned persons have worked as casual labour during 1983 to 1985 for more than 90 days but less than 240 days in 12 calendar months But they have not registered themselves for consideration for absorption in the Bank service in terms of circular of the Bank Therefore they were not called for interview in Sept 1985 but the Bank will give them chance to appear them in future interview Thus from the Bank's own admission it is apparent that the concerned persons were working between 1983 to 1985 for more than 90 days in a calendar year and as per the circular of the Bank they ought to have been called for interview for absorption in the Bank but the management has not filed any document to show that the circular was brought to the notice of the concerned persons and they were intimated to get themselves registered for the interview. It is not disputed that the Bank has a circular that a person doing casual work for more than 90 days has to be given opportunity to be absorbed in the permanent cadre but the management has not given any opportunity to the concerned persons. Thus from the materials available on record I find that the concerned persons were actually engaged by the management and they were performing the job of messenger but in order to camouflage and hide the real issue the management has tried to brand the concerned persons as contract labour and as a matter of fact the contract was totally sham and camouflage to hide the real issue. If we lift the veil and peep inside, the real thing will appear and it is clear that the concerned persons are the employees of the Bank and there is relationship of employer and employee between the management and the concerned persons. Further more, in absence of the registration of the establishment under Contract Labour (Regulation and Abolition) Act and the licence of the so-called contractor the concerned persons must be treated to be the workmen of the principal employer i.e. the management Bank. In order to support this contention the sponsoring union has placed reliance in the case of United Labour Union which has been reported in L.L.J. Part I P-89. The management of the Bank has submitted that since the number of persons engaged by the contractor was less than 20, therefore, the Act is not applicable and to answer to this contention the sponsoring union has relied upon a ruling of Bombay High Court, Nagpur reported in 1986 Lab. I.C. 204 to show that the registration of establishment and licence to the contractor is must. Yet in o her several even our Apex Court has settled the principle that in absence of licence to the contractor and registration of the principal employer the contract labourers shall be deemed to be the workmen of the principal employer.

8. Thus from the discussions made above I find and hold that the concerned persons are the workmen of the management of Secretariat Branch of the State Bank of India.

9. Since we have found that the concerned persons were engaged by the management of the Bank as contract labour on daily wages and they were performing the job of Messenger-cum-Water boy and were also cleaning and sweeping the Bank premises on permanent and perennial nature of job for years together right from the year 1983 and there is a circular of the Bank to absorb such casual workers whose attendance is more than 90 days in a calendar year. Therefore, I do not find any reasons why the concerned persons should not be regularised in the permanent employment of the management of the State Bank of India, Secretariat Branch, Patna. Rather not to order for regularisation will be real exploitation of the concerned persons and unfair labour practice by an institution like State Bank of India.

Therefore, I find that the concerned persons are entitled to be regularised as permanent employee of the Bank from the date of reference i.e. 12-12-91 without difference of back wages because there is no evidence before me that the concerned persons are idling or they have not been gainfully employed somewhere else; but they will be entitled for increment as if they have be appointed from the date of reference i.e. 12-12-91 and they will also get seniority from that.

10. In the result, the following Award is rendered :—

"The demand of the sponsoring Union for regularisation of the concerned persons is justified and they are entitled for absorption in the permanent employment of the Bank as Class IV employee as Messengar-cum-Water Boy with effect from the date of reference but without difference of Back wages. However, their services shall be reckoned from the date of reference i.e. 12-12-91 for the purpose of seniority and increment."

dt. 2-3-2001

SARJU PRASAD, Presiding Officer

नई दिल्ली, 22 मार्च, 2001

का. आ. 776.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार थार आंचलिक ग्रामीण बैंक के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में, निर्दिष्ट औद्योगिक विवाद मे केन्द्रीय सरकार औद्योगिक अधिकरण /श्रम न्यायालय जोधपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 21-3-2001 को प्राप्त हुआ था ।

[सं. एल-41015/4/97-आई आर (बी-I)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 22nd March, 2001

S.O. 776.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal/Labour Court, Jodhpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management on Thar Anchalik Gramin Bank and their workman, which was received by the Central Government on 21-3-2001.

[No. L-41015/4/97 IR(B-I)]
AJAY KUMAR, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी :—श्री राजेन्द्र कुमार चाचाण, आर. एच. जे. एस.

केन्द्रीय औ. वि. सं. :—8/97

परमेश्वर प्रजापत पुत्र श्री मोहनलाल जी प्रजापत थार आंचलिक ग्रामीण बैंक ए-54 शास्त्रीनगर, जोधपुर ।

...प्रार्थी

बनाम

थार आंचलिक ग्रामीण बैंक प्रधान कार्यालय ए-54 शास्त्रीनगर, जोधपुर ...अप्रार्थी

उपस्थिति :—

(1) प्रार्थी की ओर से श्री डी. के. परिहार प्रतिनिधि उप.

(2) अप्रार्थी की ओर से श्री चन्द्रशेखर व्यास प्रतिनिधि उप.

अधिनिर्णय

दिनांक : 27-2-2001

श्रम मंत्रालय भारत सरकार नई दिल्ली ने अपनी अधिसूचना क्रमांक एल-41015/4/97/आई. आर. (बी-1) दिनांक 26-5-97 से निम्न विवाद वास्ते अधिनिर्णय इस न्यायालय को प्रेषित किया है :—

"Whether the action of the management to Thar Anchalik Gramin Bank, Jodhpur to giving pay scale of Rs. 900—2680 to Sh. Parmeshwar Prajapat, Steno-Typist (English) from the date of implementation of NIT Award dated 30-4-90 is justified? If not, to what relief the workman is entitled to and from what date?"

प्रार्थी ने अपने मांग-पत्र में यह अभिकथित किया है कि प्रार्थी की नियुक्ति स्टेनो टाईपिस्ट (अंग्रेजी) ग्रेड-II के पद पर दिनांक 11-8-88 को वेतन श्रृंखला 1140-2250 में दिनांक 23-7-88 के जरिये हुई, दिनांक 1-9-88 से वेतन श्रृंखला 1440-2250 से संशोधित होकर 1400-2600 हो गई, अप्रार्थी के यहां क्षेत्रीय पर्यवेक्षक की वेतन श्रृंखला 1400-2600 ही थी । अप्रार्थी ने बिना किसी कारण के अपने आदेश संख्या 27-3-91 से प्रार्थी की वेतन श्रृंखला 1400-2600 से 900-2680 कर दी जो कि प्रार्थी की पदावनती ही मानी जा सकती है उपरोक्त परिवर्तन के पूर्व प्रार्थी को न तो कोई अभ्यावेदन दिया गया न ही दोषी पाया गया न ही कोई नोटिस दिया गया । अप्रार्थी संस्थान में राज्य सरकार वाले वेतन लागू किये गये है जो कि धारा 17 प्रादेशिक ग्रामीण बैंक अधिनियम 1976 के तहत जारी किये गये । केन्द्रीय सरकार की अधिसूचना सं. एफ 10-36/79/आर. आर. बी. दिनांक 17-3-80 के द्वारा स्टेनो का वही वेतन रहेगा जो कि राज्य-सरकार के स्टेनो के लिए निर्धारित है । प्रार्थी का वेतन 900-2680 जो कि कनिष्ठ लिपिक की वेतन श्रृंखला है, उसमें निर्धारित कर दी गई, प्रार्थी के वेतन से भी कटौती कर ली गई जो कि अवैध है । अन्त में प्रार्थना की है कि आदेश दिनांक 27-3-91 को अपास्त कर अधिनिर्णय के एक सप्ताह में प्रार्थी के वेतन का पुनः निर्धारण वेतन श्रृंखला 1400-2600 में किया जावे व प्रार्थी के वेतन में से कटौती की गई राशि उक्त अनुतोष अनुसार सय ब्याज प्रार्थी को दिलाई जावे ।

अप्रार्थी की ओर से जवाब प्रस्तुत करते हुए कहा गया है कि प्रार्थी को स्टेनो टाईपिस्ट के पद पर 1140 से 2250 की वेतन श्रृंखला में जुलाई 23, 1988 के नियुक्ति-पत्र की शर्तों के अनुसार नियुक्त किया गया, क्षेत्रीय ग्रामीण बैंक

अधिनियम, 1976 एवं भारत सरकार के निर्देशानुसार राजस्थान सिविल सेवा (पुनरीक्षित वेतनमान) नियम 1989 के तहत प्रार्थी की स्टेनो टाईपिस्ट हेतु वेतन श्रृंखला 1140-2250 को दिनांक 1-9-88 से संशोधित कर 1400-2300 की गई जब कि प्रार्थी द्वारा गलत रूप से 1400-2600 अंकित किया गया है । बैंक में क्षेत्र पर्यवेक्षक को दिनांक 1-9-88 से वेतन श्रृंखला 1160-2360 को संशोधित कर वेतन श्रृंखला 1400-2360 की गई थी। भारत सरकार से दिनांक 22-2-91 के परिपत्र के अनुसार दिनांक 1-9-87 के पश्चात् भर्ती किये गये प्रार्थी को उनकी नियुक्ति की तारीख से प्रायोजक बैंक के वेतनमान के पहले चरण में फिट किया गया है, तथा कनिष्ठ लिपिक मय रोकड़िया, कनिष्ठ लिपिक मय टाईपिस्ट एवं स्टेनोग्राफर समतुल्य माना गया है, चूंकि प्रार्थी की नियुक्ति स्टेनो टाईपिस्ट (आंग्ल) के पद पर हुई थी जिसपर क्षेत्रीय ग्रामीण बैंक (कर्मचारी वृद्ध) सेवा विनियम 1983 की विनियम संख्या-3(3) लागू होती है एवं स्टेनो टाईपिस्ट का पद उक्त विनियम के तहत निहित किया गया है इसके अतिरिक्त प्रार्थी किसी भी अन्य पदमान अथवा वेतन का लाभ प्राप्त करने का अधिकारी नहीं है क्योंकि स्टेनो टाईपिस्ट क्लेरिकल ग्रेड में हो जाता है, ऑफिसर ग्रेड में नहीं । भारत सरकार ने राष्ट्रीय औद्योगिक न्यायाधिकरण एवार्ड के तहत प्रार्थी के वेतनमान निर्धारण के दिशा निर्देश जारी किये गये है अतः प्रार्थी की यह मांग स्वीकार नहीं की जा सकती है कि प्रार्थी की वेतन श्रृंखला वही रहेगी जो राज्य सरकार के स्टेनो के लिए निर्धारित है । प्रार्थी को लिपिक मय रोकड़िया की वेतन श्रृंखला दी जा रही है तथा इसके अतिरिक्त स्टेनो टाईपिस्ट के पद पर कार्य करने के कारण स्टेनोग्राफर विशेष भत्ता अलग से दिया जा रहा है जो कि सही है । अप्रार्थी द्वारा राष्ट्रीय औद्योगिक न्यायाधिकरण पंचाट के तहत भारत सरकार के आदेशानुसार प्रार्थी का वेतन श्रृंखला 900 से 2680 में वेतन निर्धारण करना विधि सम्मत है तथा इसे अपास्त नहीं किया जा सकता है । प्रार्थी की संशोधित वेतन श्रृंखला दिये जाने के बाद यदि परिलब्धियों में कमी रहती है तो उसे वैयक्तिक भत्ता देकर संरक्षित करने का प्रावधान है पुरानी वेतन श्रृंखला देने की मांग विधि सम्मत नहीं होने के फलस्वरूप प्रार्थी कोई राहत प्राप्त करने का अधिकारी नहीं है । अतिरिक्त कथन में कहा गया है कि प्रार्थी की नियुक्ति मात्र स्टेनो टाईपिस्ट के पद पर की गई थी उसमें सीनियर ग्रेड स्टेनो अथवा स्टेनो ग्रेड-II के पद पर नहीं की गई थी, प्रार्थी द्वारा अपना क्लेम मात्र निजी तौर पर व्यक्तिगत रूप से प्रस्तुत किया है किसी यूनियन के मार्फत नहीं किया, टर्मस ऑफ रेफरेन्स ही गलत रूप से प्रेषित की गई है । अन्त में प्रार्थना की है कि प्रार्थी का मांग-पत्र सव्यय खारिज किया जावे ।

प्रार्थी ने अपने मांग-पत्र की ताईद में स्वयं अपना शपथ-पत्र प्रस्तुत किया जिसपर अप्रार्थी द्वारा जिरह की गई । अप्रार्थी की ओर से प्रकाशचन्द सेठी का शपथ-पत्र प्रस्तुत किया गया जिस पर प्रतिनिधि द्वारा जिरह की गई । दोनों पक्षों की ओर से विभिन्न दस्तावेजों की फोटो स्टेट प्रतिलिपियां प्रस्तुत की गई ।

मैंने दोनों पक्षों के विद्वान प्रतिनिधियों की बहस सुनी, पत्रावली का अवलोकन किया ।

प्रार्थी के विद्वान् प्रतिनिधि ने तर्क प्रस्तुत करते हुए कहा है कि प्रार्थी की नियुक्ति स्टेनो टाईपिस्ट के पद पर 23-7-88 के आदेश के जरिये दिनांक 11-8-88 को वेतन श्रृंखला 1140-2250 में हुई तथा 1-9-88 को उक्त वेतन श्रृंखला को संशोधित करते हुए 1400-2600 किया गया तथा प्रार्थी को बिना कोई कारण बताये बिना कोई आरोप-पत्र दिये बिना कोई जांच किये 27-3-91 के आदेश से प्रार्थी की वेतन श्रृंखला 1400-2600 से 900-2680 कर दी गई जो कि प्रार्थी की पदावनती है । अप्रार्थी संस्थान में राज्य-सरकार वाले वेतनमान ही लागू किये गये हैं, प्रार्थी का वेतन 900-2680 जो कि कनिष्ठ लिपिक की वेतन श्रृंखला है, उसमें निर्धारित कर ली गई है तथा प्रार्थी के वेतन से भी कटौती कर ली गई है जो कि अवैध है अतः दिनांक 27-3-91 का आदेश अपास्त कर पुनः वेतन निर्धारण 1400-2600 में किये जाने की प्रार्थना की है ।

अप्रार्थी के विद्वान् प्रतिनिधि ने तर्क प्रस्तुत करते हुए कहा है कि प्रार्थी का यह विवाद चलने योग्य नहीं है क्योंकि प्रार्थी को एन. आई. टी. एवार्ड के पहले राज्य-सरकार द्वारा ग्रामीण बैंकों के लिए निर्धारित वेतन श्रृंखला के अनुसार वेतन श्रृंखला दी जा रही थी, एन. आई. टी. एवार्ड 30-4-90 को जारी हुआ था एवं 1-9-87 से प्रभावी माना तथा प्रार्थी को नियुक्ति 11-8-88 को हुई, दिनांक 22-2-91 को भारत सरकार के द्वारा जरिये परिपत्र के निर्देशन सभी बैंकों को दिया उसमें स्टेनो टाईपिस्ट का प्रायोजक बैंक लिपिक मय रोकड़िया के समकक्ष स्टेनो टाईपिस्ट के समकक्ष माना तथा 20-3-93 को नरसिंहन के तहत पर्सनल एलाउन्स देय अन्तर वेतन को जोड़कर दिया जिससे प्रार्थी को कोई नुकसान नहीं हुआ है । यह भी तर्क दिया है कि बैंकिंग सेवा नियम में चैप्टर द्वितीय में 3/3 में प्रार्थी लिपिक कम रोकड़िया की श्रेणी में वर्गीकृत है अतः प्रार्थी प्रोन्नतियों की तलवाड़ का पात्र नहीं है । भारत सरकार के गजट आर. बी. एक्ट 1976 की धारा 17 के तहत प्रायोजक बैंक कर्मचारियों के वेतन निर्धारण का अधिकार है उन्हीं आदेशों के तहत प्रार्थी का वेतन निर्धारित किया गया है । यह भी तर्क दिया है कि रेफरेन्स अधिनियम की धारा 10 के तहत किया है यूनियन के मार्फत नहीं है अतः चलने योग्य नहीं है । अतः प्रार्थी कोई राहत प्राप्त करने का अधिकारी नहीं है, प्रार्थी का मांग-पत्र सव्यय खारिज किया जावे ।

मैंने तर्कों पर मनन किया ।

प्रार्थी ने अपने शपथ-पत्र की जिरह में कहा है कि मेरी से पहले नियुक्ति दिनांक 11-8-88 को हुई थी तथा

स्टेनो टाईपिस्ट के पद पर हुई थी, उस वक्त वेतन ऋंखला 1140-2250 रुपये थी, क्षेत्रीय ग्रामीण बैंक व जिला सहकारी बैंक के नियम अलग हों तो मुझे जानकारी नहीं है। रिवाईज्ड की हुई वेतन ऋंखला से मैंने वेतन अपने जीवन यापन के लिए उठाना शुरू कर दिया था सबसे पहले मैंने रिवाईज्ड पे मार्च, 1991 में ली थी, वेतन कम करने का बैंक द्वारा आदेश दिया गया था, जिस दिन वेतन दिया उसी दिन रिवाईज्ड पे का आदेश दिया था, वेतन रिवाईज्ड का मैंने विरोध किया उसका मेरे पास लिखित में कोई नहीं है। यह बात सही है कि स्टेनोग्राफर टाईपिस्ट के एलाउन्स का अतिरिक्त भत्ता मिलता है, लिपिक, केशियर व स्टेनोग्राफर टाईपिस्ट को एक ही वेतन ऋंखला दी जा रही हो तो मुझे पता नहीं, स्टेनोग्राफर द्वितीय के पद का कोई नियुक्ति अथवा पदोन्नति का आदेश नहीं दिया था।

विपक्षी के गवाह प्रकाशचन्द सेठी ने अपने शपथ-पत्र की जिरह में कहा है कि राज्य-सरकार के दिशा निर्देश सीधे हमारे ऊपर लागू नहीं होते है। प्रदर्श ए-1 श्रमिक का स्थाई करने का आदेश है। राष्ट्रीय औद्योगिक अधिकरण के अधिनिर्णय में पहले थार आंचलिक ग्रामीण बैंक (कर्मचारी।) सेवा नियम 1983 लागू थे और आज भी ये ही नियम लागू हैं, क्षेत्रीय ग्रामीण बैंक अधिनियम, 1976 की धारा 17(1) के तहत भारत सरकार के द्वारा समय-समय पर जारी दिशा निर्देशानुसार वेतन एवं भत्तों के नियम लागू होते हैं जिसका उल्लेख सेवा नियमों में किया हुआ है, एन. आई. टी. एवार्ड लागू होने से पहले प्रार्थी का वेतन 1400-2600 में नहीं था। यह सही है कि प्रार्थी का वेतन एन. आई. टी. एवार्ड के बाद में 900-2680 की वेतन ऋंखला में निर्धारित कर दिया क्योंकि एन. आई. टी. एवार्ड के पैरा नं. 4.428 के अनुसार भारत सरकार के इक्सेप्शन कमेटी के आधार पर 22-2-91 के परिपत्र जारी कर वेतन एवं भत्तों का भुगतान करने के निर्देश क्षेत्रीय ग्रामीण बैंकों को जारी किये थे जिसके अनुसार प्रार्थी के पद का निर्धारण कर एवं वेतन ऋंखला प्रदान की गई थी जिसमें वेतन ऋंखला के साथ स्टेनो टाईपिस्ट को देय विशेष कार्यकारी भत्ता और दिया जाना निर्देशित था, एनेक्सजर-1 में पैरा ई में स्टेनोग्राफर एवं स्टेनो टाईपिस्ट दोनों का प्रायोजक बैंक के लिपिक मय रोकड़िया के समकक्ष बताया गया है, प्रायोजक बैंक में स्टेनोग्राफर सुपरवाईजरी पोस्ट नहीं है क्योंकि प्रार्थी स्टेनो टाईपिस्ट के पद पर कार्यरत है यह गलत है कि एन. आई. टी. एवार्ड के बाद में प्रार्थी की वरिष्ठता का निर्धारण कम कर दिया गया, प्रार्थी की नियुक्ति के समय राज्य-सरकार के नियम लागू नहीं थे परन्तु भारत सरकार के निर्देशानुसार राज्य-सरकार के समकक्ष वेतन ऋंखला निर्धारित की गई थी।

अप्रार्थी की ओर से थार आंचलिक ग्रामीण बैंक स्टाफ सर्विस रेगुलेशन 1983 की फोटो स्टेट प्रति पेश की गई है जिसके अवलोकन से यह स्पष्ट है कि चैप्टर-II एपोईन्टमेन्ट, प्रोबेशन एण्ड टर्मिनेशन ऑफ सर्विस के पैरा-3 में स्टाफ के अन्तर्गत ओफिसर्स व कर्मचारियों की केटेगिरी को दर्शाया गया है जिसमें कर्मचारियों की केटेगिरी में सीनियर क्लर्क कम केशियर, जूनियर क्लर्क कम केशीयर, जूनिर क्लर्क कम टाईपिस्ट, स्टेनोग्राफर और स्टेनो टाईपिस्ट, ड्राईवर कम मेसेन्जर आदि को दर्शाया गया है। तथा स्टेनो टाईपिस्ट को अधिकारी की श्रेणी में नहीं दर्शाया गया है। साक्ष्य से यह प्रमाणित है कि प्रार्थी को एन. आई. टी. एवार्ड के पहले राज्य-सरकार द्वारा ग्रामीण बैंकों के लिये निर्धारित वेतन ऋंखला के अनुसार वेतन ऋंखला दी जा रही थी। इस पर कोई विवाद नहीं है कि एन. आई. टी. एवार्ड 30-4-90 को जारी हुआ तथा 1-9-87 से प्रभावी माना गया एवं प्रार्थी की नियुक्ति 11-8-88 को हुई थी। पत्रावली पर उपलब्ध 22-2-91 के भारत सरकार के परिपत्र में स्टेनो टाईपिस्ट का प्रायोजक बैंक लिपिक मय रोकड़िया के समक्ष माना गया है। यह तथ्य भी प्रमाणित है कि एन. आई. टी. एवार्ड के अनुसार प्रार्थी का फिक्सेशन किया गया है जिससे प्रार्थी को कोई नुकसान नहीं हुआ है तथा एरियर भी प्रार्थी ने प्राप्त कर लिया है, इस तथ्य को प्रार्थी ने स्वीकार किया है कि स्टेनोग्राफर टाईपिस्ट के एलाउन्स का अतिरिक्त भत्ता उसे मिलता है तथा लिपिक, केशियर व स्टेनोग्राफर टाईपिस्ट को एक ही वेतन ऋंखला दी जा रही है। चूंकि प्रार्थी को बैंकिंग सेवा नियम में चैप्टर द्वितीय में 3/3 में लिपिक कम रोकड़िया की श्रेणी में वर्गीकृत है अतः प्रार्थी अधिकारी के वेतन का पात्र नहीं हो सकता। विपक्षी के गवाह ने इस तथ्य को स्वीकार किया है कि भारत सरकार का आर. आर. बी. एक्ट 1976 की धारा 17 के तहत भारत सरकार द्वारा समय-समय पर जारी दिशा निर्देशानुसार वेतन एवं भत्तों के नियम लागू होते हैं तथा उन्हीं आदेशों के तहत प्रार्थी का वेतन निर्धारित किया गया है। पत्रावली पर उपलब्ध दस्तावेजी एवं मौखिक साक्ष्य से यह स्पष्ट है कि दिनांक 22-2-91 के परिपत्र के द्वारा भारत सरकार की एन. आई. टी. एवार्ड को लागू करने के निर्देश दिये गये जिसके तहत ही प्रार्थी को वेतन ऋंखला दी गई तथा कुछ विसंगतियों को दूर करने के लिए भारत सरकार ने एक कमेटी बनाई इस कमेटी के आधार पर 20-3-93 को नाबार्ड (राष्ट्रीय कृषि एवं ग्रामीण विकास बैंक) भारत सरकार के सर्कुलर द्वारा यह निर्देश जारी किया गया है कि जिन कर्मचारियों की वेतन ऋंखला में राज्य-सरकार व एन. आई. टी. एवार्ड के कारण कुल वेतन के अन्तर होने पर उसे व्यक्तिगत एलाउन्स देकर क्षतिपूर्ति की गई जिसका लाभ भी प्रार्थी को दिया गया है अतः मेरी राय में प्रार्थी को कोई नुकसान नहीं हुआ है। अतः मेरी राय में प्रार्थी को 30-4-90 से वेतन ऋंखला 900-2680 दिलाया जाना उचित नहीं है।

यहां यह भी उल्लेखनीय है कि वेतन ऋंखला का उक्त मामला प्रार्थी ने व्यक्तिगत केपेसिटी में प्रस्तुत किया है। प्रार्थी को वेतन ऋंखला के सम्बन्ध में यह विवाद व्यक्तिगत उठाने का अधिकार भी नहीं है, ऐसे मामले यूनियन के

माध्यम से ही उठाये जाने चाहिये । अतः इस आधार पर भी प्रार्थी का विवाद चलने योग्य नहीं रह जाता है ।

अधिनिर्णय

अतः यह अधिनिर्णय किया जाता है कि प्रार्थी परमेश्वर प्रजापत पुत्र श्री मोहनलाल प्रजापत पार आंचलिक ग्रामीण बैंक ए-54 शास्त्रीनगर, जोधपुर की यह मांग कि उसे वेतन श्रृंखला 900-2680 एस. आई. टी. एवार्ड दिनांक 30/4/90 से दिलाई जावे, उचित एवं बैध नहीं है । अतः प्रार्थी कोई राहत अप्रार्थी नियोजक से प्राप्त करने का अधिकारी नहीं है ।

इस अधिनिर्णय को प्रकाशनार्थ केन्द्रीय सरकार नई दिल्ली श्रम मंत्रालय को प्रेषित किया जावे ।

राजेन्द्र कुमार चाचाण, न्यायाधीश

नई दिल्ली, 20 मार्च, 2001

का.आ. 777.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर टेलीकॉम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-2001 को प्राप्त हुआ था ।

[सं. एल-40012/89/2000/ आई आर (डी यू)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 20th March, 2001

S.O. 777.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal|Labour Court, Chennai, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Telecom. and their workman, which was received by the Central Government on 20-3-2001.

[No. L-40012|89-2000-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 27th February, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

Industrial Dispute No. 15|2000

(In the matter of the dispute for adjudication under section 10(1)(d) and sub-section 2(A) of the Industrial Disputes Act,1947 between the Claimant and the Management, The General Manager, Telecommunications, Chennai.)

BETWEEN

Shri A. Ramakrishnan ..Petitioner|I Party

AND

The General Manager, Telecommunications, Chennai. ..Management|II Party

APPEARANCE :

For the workman.—M|s. M. Gnanasekar and C. Premavathy, Advocates.

For the Management.—Sri R. Kanniappan, Addl. Central Government Standing Counsel.

REFERENCE :

Order No. L-40012|89|2000|IR(DU) dated 30-5-2000, Government of India, Ministry of Labour, New Delhi.

This dispute on coming up before me for final hearing on this day, the 27th February, 2001, the counsel appearing on either side are present along with II Party|Management. The I Party workman is not present. He is called absent. The counsel on record for the I Party workman represents to the Court that the I Party workman never turns up to give him instructions to proceed with the enquiry in this Industrial Dispute, inspite of his so many reminder to him and hence, he reports no instructions. He has made an endorsement to that effect on the Vakkalat given to him by the Workman|I Party. After considering all the materials available in this case, this Tribunal pass the following :—

AWARD

This reference by the Central Government in the exercise of the powers conferred by Clause (d) of sub-section (1) and sub- section 2(A) of Section 10 of Industrial Disputes Act, 1947 in respect of dispute between Sri A. Ramakrishnan, Workman and the General Manager, Telecommunications, Chennai, Management as Schedule appended to the order of reference.

The Schedule reads as follows :—

"Whether the demand of the workman Shri A. Ramakrishnan for reinstatement with backwages by the Management of General Manager, Telecom, Kancheepuram is justified ? If so, to what relief he is entitled ?"

On receipt of this reference, this industrial dispute has been taken on file this tribunal 27-6-2000 as Industrial Dispute No. 15|2000. On receipt of the notice from this Tribunal, both the authorities appeared with the respective counsels and filed their respective Claim Statement and Counter Statement.

2. The averments of the Claim Statement of the I Party|Workman are briefly as follows :—

The Petitioner was appointed as casual mazdoor on 17-1-1985 and he was engaged as casual labour and paid daily wages of Rs. 6.50. The Petitioner has been continuing the work with the Respondent has put in 1302 number of days of service. The Petitioner's services were terminated on 25-3-1996.

The Petitioner was getttng Rs. 60 per month at the time of termination. The Petitioner was employed in the Sub-Divisional Engineer Groups, Kancheepuram at the time of termination. His service has not been regularised so far. There is also a scheme for casual labour (Grant of temporary status and Regularisation) regarding regularisation of the casual workers. The Petitioner was not granted temporary status in accordance with the Scheme. The Petitioner has been denied employment from the year 1995. The Petitioner was informed that he will be taken back to duty after short time. No reason was given for terminating his services by the Respondent. The Respondent failed to follow the principles of natural justice. No enquiry was conducted nor the Petitioner was given an opportunity before his services were discontinued. The Petitioner was waiting for orders from the concerned authority regarding his re-engagement. The Petitioner had not received any orders and he was not taken back to duty so far. His services were utilised for the regular work and the work performed by him was of perennial in nature. When the work and necessity to engage the Petitioner continuous, there is no reason or justification for denying employment to the Petitioner. The Petitioner should have been made permanent. The representation made by the Petitioner to the authorities failed to yield any result. The Supreme Court has declared the Telecommunication Department as an industry in one of its verdicts. The Petitioner has put in more than a decade continuous service and the termination of service is violation of Section 25F of the Industrial Disputes Act, 1947. He was not given any notice of compensation in terms of that section. The termination of the service without any notice or compensation is ab initio void and he is deemed to be in continuous service and therefore, entitled to be reinstated with all other service benefits including arrears of backwages. The Petitioner ought to have conferred temporary status as per the Scheme and further absorbed the Petitioner against the regular Group 'D' post. Not doing so is illegal and arbitrary. The attempt made by the Petitioioner before the Regional Labour Commissioner for an effective settlement ended in a failure. On submission of the failure report with the Conciliation Officer, this reference has been made in this Tribunal for adjudication for this industrial dispute. Hence, it is prayed that this Hon'ble Court may be pleased to pass an award declaring that order of termination passed against the Petitioner is illegal and arbitrary and consequently direct the Respondent Management to reinstate the Petitioner in service with effect from the date of termination and further direct the Respondents to pay all the arrears of back wages and all other attendant benefits.

3. The averments in the Counter Statement of the Recruitment|II Party Management are briefly as follows :—

The II Party|Management (hereinafter referred to as Respondent) denied all the allegations contained in the Claim Petition of the Claimant|Petitioner as false, incorrect and unsustainable. The petition is not maintainable either in law or facts, hence should be dismissed. The Petitioner was engaged by the department to carry out digging drawing wires and laying post and for other casual works on daily rated wage basis. The department used to engage the Petitioner as and when there was work. Scheme called 'Grant of Temporary Status to casual labourers' was introduced in 1989. The essential conditions for grant of temporary status is that (i) the casual labourer should have been engaged prior to 31-3-1985; (ii) they should be currently employed on the date of implementation of the Scheme i.e. 1-10-1989 and (iii) he should be put 240 days continuous service in any one of the preceding years prior to 1-10-1989. The Petitioner was directed to Petitioner did not fiulfil all the aforesaid mandatory conferment of Temporary Status. The Petitioner also furnished the service particulars. Since the Petitioner did not fulfill all the aforesaid mandatory conditioners, he would not be granted TSM status. The service particulars produced by the Petitioner were scrutinised. The muster rolls which the Petitioner has mentioned in the service certificate as authority for engagement for work, were verified and found the name of the Petitioner was not in those muster rolls. The Petitioner had produced false service certificates with a view to get benefits like regularisation etc. from the department. The Petitioner has not worked 240 days in any of the years between 1985 to 1991. Since the TSM is the pre-requisite for regularisation as Group 'D', the question of regularisation is ruled out in this case. The Petitioner's services were terminated since there was no work. At the time of termination of the services of the Petitioner, the department has not been declared as an industry. Hence, the question of applicability of Industrial Dispute Act does not arise in this case. Moreover, since the Petitioner has not put in 240 days of service in any one year, the case is, prima-facie, devoid of any merits to be considered by this Tribunal under Industrial Disputes Act. Hence, it deserves outright rejection. The Petitioner has not come forward with clear hands and therefore, the petition has to be dismissed. Hence, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the petition with exemplary costs.

4. When the matter was taken up for enquiry, the counsel on either side were present. The Petitioner|I Party Claimant is not present. The II Party Management|Respondent's representative is present. Learned counsel for the Petitioner|Claimant informs the Court that inspite of his repeated reminders to the Petitioner, he has not turned up to give him instructions to proceed with enquiry in this case. Hence, he is reporting no instructions from the Petitioner|I Party. Accordingly, he has made an endorsement on the Vakkalat given by the I Party|Claimant.

5. Under such circumstances, in the absence of prosecution of this dispute by the Claimant, there is no necessity to go into the merits and demerits of the claim of the Petitioner as referred to in the Schedule of reference as an industrial dispute. In the absence of the Claimant and his failure to give instructions to the counsel on record as it is reported by the learned counsel for the I Party|Claimant, it denotes the Petitioner is not interested in prosecuting this case and he is not inclined to press the claim he made in this petition as an industrial dispute. In view of the non-prosecution of this case by the

I Party Claimant/Petitioner, this Tribunal has to conclude that there is nothing to adjudicate upon in respect of the industrial dispute referred in the Schedule of reference.

6. In the result, an award is passed holding no dispute exists now as it is referred to in the Schedule of reference between the parties in this proceedings. No Cost.

(Dictated to Stenographer and transcribed and typed by him and corrected and pronounced by me in the open court on this day, the 27th February, 2001)

K. KARTHIKEYAN, Presiding Officer

नई दिल्ली, 20 मार्च, 2001

का.आ. 778.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर टेलीकाम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-2001 को प्राप्त हुआ था ।

[सं. एल-40012/86/2000/आईआर (डी यू)]
कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 20th March, 2001

S.O. 778.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of General Manager, Telecom. and their workman, which was received by the Central Government on 20-3-2001.

[No. L-40012/86/2001/IR(DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 27th February, 2001

PRESENT :

K. Karthikeyan, Presiding Officer
Industrial Dispute No. 16/2000

(In the matter of the dispute for adjudication under section 10(1)(d) & sub-section 2(A) of the Industrial Disputes Act, 1947 between the Claimant and the Management. The General Manager, Telecommunications, Chennai.)

BETWEEN

Shri S. Babu : Petitioner/I Party.

AND

The General Manager,
Telecommunications,
Chennai. Management/II Party.

APPEARANCES :

For the workman : M/s. M. Gnanasekar and C. Premavathy, Advocates.
For the Management : Shri R. Kanniappan, Addl. Central Govt. Standing Counsel.

REFERENCE :

Order No. L-40012/86/2000/IR(DU) dt 30-5-2000, Govt. of India, Ministry of Labour, New Delhi.

This dispute on coming up before me for final hearing on this day, the 27th February, 2001, the counsel appearing on either side are present along with II Party/Management. The I Party workman is not present. He is called absent. The counsel on record for the I Party workman represents to the Court that the I Party workman never turns up to give him instructions to proceed with the enquiry in this Industrial Dispute, inspite of his so many reminders to him and hence, he reports no instructions. He has made an endorsement to that effect on the Vakkalat given to him by the workman/I Party After considering all the materials available in this case, this Tribunal pass the following :—

AWARD

This reference by the Central Government in the exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 in respect of dispute between Sri S. Babu, Workman and the General Manager, Telecommunications, Chennai, management as Schedule appended to the order of reference.

The Schedule reads as follows :—

"Whether the action of the Management of General Manager, Telecom., Kancheepuram in terminating the services of Shri S. Babu, Casual Mazdoor is justified ? If not, to what relief is he entitled ?"

On receipt of this reference, this industrial dispute has been taken on file of this Tribunal on 27-06-2000 as Industrial Dispute No. 16/2000. On receipt of the notice from this Tribunal, both the authorities appeared with the respective counsels and filed their respective Claim Statement and Counter Statement.

2. The averments of the Claim Statement of the I Party/Workman are briefly as follows :—

The Petitioner was appointed as casual mazdoor on 17-1-1985 and he was engaged as casual labour and paid daily wages of Rs. 4.25 The Petitioner has been continuing the work with the Respondent has put in 1318 number of days of service. The Petitioner's services were terminated on 30-10-1995. The Petitioner was getting Rs. 1800/- per month at the time of termination. The Petitioner was employed in the Sub-Divisional Engineer Groups,

Kancheepuram at the time of termination. His service has not been regularised so far. There is also a scheme for casual labour (Grant of temporary status and Regularisation) regarding regularisation of the casual workers. The Petitioner was not granted temporary status in accordance with the Scheme. The Petitioner has been denied employment from 30-10-1995. The Petitioner was informed that he will be taken back to duty after short time. No reason was given for terminating his services by the Respondent. The Respondent failed to follow the principles of natural justice. No enquiry was conducted nor the Petitioner was given an opportunity before his services were discontinued. The Petitioner was waiting for orders from the concerned authority regarding his re-engagement. The Petitioner had not received any orders and he was not taken back to duty so far. His services were utilised for the regular work and the work performed by him was of perennial in nature. When the work and necessity to engage the Petitioner continuous, there is no reason or justification for denying employment to the Petitioner. The Petitioner should have been made permanent. The representation made by the Petitioner to the authorities failed to yield any result. The Supreme Court has declared the Telecommunication Department as an industry in one of its verdicts. The Petitioner has put in more than a decade continuous service and the termination of service is violation of Section 25F of the Industrial Disputes Act, 1947. He was not given any notice of compensation in terms of that section. The termination of the service without any notice or compensation is ab initio void and he is deemed to be in continuous service and therefore, entitled to be reinstated with all other service benefits including arrears of backwages. The Petitioner ought to have conferred temporary status as per the Scheme and further absorbed the Petitioner against the regular Group 'D' post. Not doing so is illegal and arbitrary. The attempt made by the Petitioner before the Regional Labour Commissioner for an effective settlement ended in a failure. On submission of the failure report with the Conciliation Officer, this reference has been made in this Tribunal for adjudication for this industrial dispute. Hence, it is prayed that this Hon'ble Court may be pleased to pass an award declaring that order of termination passed against the Petitioner is illegal and arbitrary and consequently direct the Respopndent Management to reinstate the Petitioner in service with effect from the date of termination and further direct the Respondents to pay all the arrears of back wages and all other attendant benefits.

3. The averments in the Counter Statement of the Respondent/II Party Management are briefly as follows :—

The II Party/Management (hereinafter referred to as Respondent) denied all the allegations contained in the Claim Petition of the Claimant/Petitioner as false, incorrect and unsustainable. The petition is not maintainable either in law or facts, hence should be dismissed. The Petitioner was engaged by the department to carry out digging, drawing wires and laying post and for other casual works on daily rated wage basis. The department used to engage the Petitioner as and when there was work. Scheme called 'Grant of Temporary Status to casual labourers' was introduced in 1989. The essential conditions for grant of temporary status is that (i) the casual labourer should have been engaged prior to 31-3-1985; (ii) they should be currently employed on the date of implementation of the Scheme i.e. 01-10-1989 and (iii) he should be put 240 days continuous service in any one of the preceding years prior to 01-10-1989. The Petitioner was directed to submit his service particulars for the purpose of confirment of Temporary Status. The Petitioner also furnished the service particulars. Since the Petitioner did not fulfil all the aforesaid mandatory conditions, he would not be granted TSM status. The service particulars produced by the Petitioner were scrutinised. The muster rolls which the Petitioner has mentioned in the service certificate as authority for engagement for work, were verified and found the name of the Petitioner was not in those muster rolls. The Petitioner had produced false service certificates with a view to get benefits like regularisation etc. from the department. The Petitioner has not worked 240 days in any of the years between 1985 to 1991. Since the TSM is the prerequisite for regularisation as Group 'D', the question of regularisation is ruled out in this case. The Petitioner's services were terminated since there was no work. At the time of termination of the services of the Petitioner, the department has not been declared as an industry. Hence, the question of applicability of Industrial Disputes Act does not trise in this case. Moreover, since the Petitioner has not put in 240 days of service in any one year, the case is, prima facie, devoid of any merits to be considered by this Tribunal under Industrial Disputes Act. Hence, it deserves outright rejection. The Petitioner has not come forward with clear hands and therefore, the petition has to be dismissed. Hence, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the petition with exemplary costs.

4. When the matter was taken up for enquiry, the counsel on either side were present. The Petitioner/I Party Claimant is not present. The II Party Management/Respondent's representative is present. Learned counsel for the Petitioner/Claimant informs the Court that in spite of his repeated reminders to the Petitioner, he has not turned up to give him instructions to proceed with enquiry in this case. Hence, he is reporting no instructions from the Petitioner/I Party. Accordingly, he has made an endorsement on the Vakkalat given by the I Party/Claimant.

5. Under such circumstances, in the absence of prosecution of this dispute by the Claimant, there is no necessity to go into the merits and demerits of the claim of the Petitioner as referred to in the Schedule of reference as an industrial dispute. In the absence of the Claimant and his failure to give instructions to the counsel on record as it is reported by the learned counsel for the I Party/Claimant it denotes the Petitioner is not interested in prosecuting this case and he is not inclined to press the claim he made in this petition as an industrial dispute. In view of the non-prosecution of this case

by the I Party Claimant/Petitioner, this Tribunal has to conclude that there is nothing to adjudicate upon in respect of the industrial dispute referred in the Schedule of reference.

6. In the result, an award is passed holding no dispute exists now as it is referred to in the Schedule of reference between the parties in this proceedings. No Cost.

(Dictated to Stenographer and transcribed & typed by him and corrected & pronounced by me in the open court on this day, the 27th February, 2001).

K. KARTHIKEYAN, Presiding Officer

नई दिल्ली, 22 मार्च, 2001

का.आ. 779.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब डिवीजनल इंस्पेक्टर ऑफ पोस्ट आफिसेस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पलाक्कड के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2001 को प्राप्त हुआ था

[सं. एल-40012/25/99-आई आर (डी यू)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 22nd March, 2001

S.O. 779.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal/Labour Court, Palakkad, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sub-Divisional Inspector of Post Office and their workman, which was received by the Central Government on 22-3-2001.

[No. L-40012/25/99-IR (DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, PALAKKAD

(Thursday, the 22nd February 2001/3rd Phalguna, 1922)

Present

Sri B. Ranjit Kumar

Industrial Tribunal

Industrial Dispute No. 110/99 (C)

Between

The Sub-Divisional Inspector of Posts Offices, Pattambi, Ottappalam, Palghat—678 001.

(By Advs. M. Udayasankar & T. Venugopal)

And

Shri P. B. Sajeesh, Paramkulangara House, Post Kalladathur—679 552.

(By Advs. P. C. Sebastian & C. S. Ajith Prakash)

AWARD

The Government of India, Ministry of Labour as per Order No. L-40012/25/99/IR (DU) dated 21-7-1999, referred the following issues for adjudication :

"Whether the action of the management of Sub-Divisional Inspector of Post Office, Pattambi in terminating the services of Shri P. B. Sajeesh the EDDA, Kalladathur branch is legal and justified ? If not, to what relief the workman is entitled ?"

2. The contention of the workman as set out in his claim statement dated 26-10-1999 and rejoinder dated 15-3-2000 is that he had worked as an Extra Departmental Delivery Agent (EDDA) at Kalladathur Branch Post Office which comes under the Sub-Divisional Inspector of Post Offices, Pattambi, a Sub Division of Ottapalam Postal Division since 1-10-96 and his services were terminated with effect from 18-9-97 without any prior notice or notice pay. According to workman, another person was appointed in his place. The workman would further submit that his services were terminated in violation of the provisions of Section 25-F and 25-G of the I.D. Act.

3. On the other hand, the management would submits in its written statement dated 24-1-2000 that the reference order itself is not maintainable as the the EDDAs are governed by the provisions of EDDA (Conduct and Service Rules) 1964 and that the management is neither an "industry" nor the person who has raised the dipspute is a "workman" under the I.D. Act and hence it was not necessary to follow the provisions of Sections 25-F and 25-G of the I.D. Act. It is further submitted by the management that the workman has already approached the Central Administrative Tribunal, Ernakulam Bench in connection with the same subject matter and hence if at all he had any further claim he has to approach that Tribunal. The management has admitted the employment of the workman as EDDA for the period from 1-10-96 to 18-9-97 at Kalladathur Branch Post Office, Pattambi. It is submitted by the management that he had worked as EDDA at Angadi P.O. also from 29-9-97 to 31-3-98 as the nominee of the permanent incumbent in the post. The contention of the management is that these engagements were purely temporary till he is replaced by a person who was regularly selected and posted.

4. The points to be first considered are whether the management is running an "industry" within the meaning of Section 2(j) of the I.D. Act and whether Sri P. B. Sajeesh who has raised this dispute is a "workman" within the meaning of Section 2(s) of the I.D. Act.

5. From the very beginning of the adjudication proceedings, the learned counsel for the management submitted that in view of the decision of the Supreme Court in Sub-Divisional Inspector of Post Office v/s. Theyyamma Joseph—1996 (8) SCC 489, the present industrial dispute is not maintainable. It is true that in this case a Two-Judge Bench of the Supreme Court has held that the postal department is not an "industry" within the meaning of Section 2(j) and EDAs who are governed by EDA Conduct and Service Rules do not belong to the category of workman attracting the provisions of the I.D. Act. This decision has been overruled by a Three-Judge Bench decision of the Supreme Court in General Manager, Telecom v/s. A. Srinivasa Rao, (1997) 8 SCC 767. In this case the Supreme Court has clearly held that the decision in Theyyamma Joseph's case cannot be treated as laying down the correct law. Therefore, the decision in Theyyamma Joseph case (Supreme) is no longer good law and cannot be relied upon. At the time of final hearing, the learned counsel for the management produced copy of an order dated 19-7-94 in O.A. Nos. 1988/91, 1288/92 and 2090/93 of Central Administrative Tribunal, Ernakulam Bench, in which the same view that has been expressed by the Supreme Court in Theyyamma Joseph's case has been taken. For the reasons already stated above, this view is not the correct proposition of law and cannot be followed. It is true that in Bangalore Water Supply Case, 1978 SCC (L&S) 215, the Constitution Bench of the Supreme Court has made a suggestion that the employees whose service conditions are governed by rules framed under Article 309 of the Constitution of India may be excluded from the purview of the I.D. Act. It is observed in the majority judgement as follows :—

> "In any case, it is open to Parliament to make law which governs the State's relations with it employees. Articles 309 to 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with employment under statutory bodies may, expressly or by necessary implication, exclude the operation of the Industrial Disputes Act, 1947. That is a question of interpretation and statutory exclusion; but, in the absence of such provision of law, it may indubitably be assumed that the key aspects of public administration like public justice stand out of the circle of industry. Even here, as has been brought out from the excerpts of ILO documents, it is not every employee who is excluded but only certain categories primarily engaged and supportively employed in the discharge of the essential functions of constitutional government. In a limited way, this head of exclusion has been recognised throughout."

The Hon'ble Chief Justice of the Supreme Court who has rendered a separate, but concurring judgement in Bangalore Water Supply Case has concluded the judgement as follows :

> "168. Hence, to artificially exclude State-run industries from the sphere of the Act, unless statutory provisions, expressly or by a necessary implication have that effect, would not be correct. The question is one which can only be solved by more satisfactory legislation on it. Otherwise, Judges could only speculate and formulate tests of "industry" which cannot satisfy all. Perhaps to seek to satisfy all is to cry for the moon."

6. In the light of the above observations of the Supreme Court, it is abundantly clear that merely because certain categories of employees are governed by statutory rules made under Article 309 of the Constitution or otherwise, they will not automatically be taken out of the purview of the I.D. Act. The Parliament or State Legislature is competent to exclude certain category of employees from the purview of the I.D. Act by framing such statutory rules and by incorporating a specific provision therein to that effect. It is also possible to amend the provisions of the I.D. Act, excluding such category of employees from the purview of the said Act. A Full-Bench of the Kerala High Court has re-affirmed this view at para 15 of its judgement in Umayammal V/s. State of Kerala 1882 KLT 829.

7. As long as Section 2(s) of the I.D. Act as is stands now, only the following categories of employees are excluded from the purview of the said Act.

A person :

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957) or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

8. A reading of Section 2(s) clearly indicates that all other employees who satisfy the main part of the said Section are entitled to the benefit of the I.D. Act. In the case at hand, the management has no case that the workman concerned in the dispute is covered by any of the excluded categories coming under Clauses I to IV of Section 2(s) or he does not satisfy the main part of that Section. Therefore, I hold that he is a "workman" as defined in Section 2(s) of the I.D. Act.

9. I am of the considered openion that in the absence of any specific provision in the I.D, Act the EDAs cannot be excluded from the purview of that Act. There are a number of public sector employees who are governed by service rules similar to that of EDA's Conduct and Service Rules (Eg. Employees of Food Corporation of India who are governed by Staff Regulations, 1971, Railway employees governed by Railway Establishment Manual, Municipal employees governed by concerned State Act/Rule etc.). By any stretch of imagination, it can be held that these categories of employees are excluded from the purview of the I.D. Act for the reason that their service conditions are governed by separate service rules. I am of the view that these service rules are just like standing orders framed under the Industrial Employment (Standing Orders) Act, 1946.

10. According to management, the workman concerned in this dispute is governed by EDA Conduct and Service Rules, 1964. There is no evidence to show that these Rules were framed under Article 309 of the Constitution. A scrutiny of these rules reveals that this is only compilation of certain executive instructions/orders and not the Rules made under Article 309. It is now well settled that the government is not competent even to add or amend the Rules framed under Article 309 by issuing executive/administrative instructions. (See the decisions in State of Haryana V/s. Shamsher Jang Bahadur-AIR 1972 SC 1546 and O. P. Lather V/s. Sathish Kumar Kakkar—2001 AIR SCW 619). Justice Talwar Committee which has set up by the Government of India to go into the service conditions of EDAs has observed in its report that in view of the 1959 Statutory Rules under the proviso to Article 309 of the Constitution, of the EDAs were treated on the same footing as Government Servants, but the position has changed consequent on the repealment of that Statutory Rules and promulgation of EDA Conduct and Service Rules, 1964. Therefore, it cannot be held that EDAs are now Government Servants or that they are outside the purview of the I.D. Act. In fact, there is no provision in these Rules excluding EDAs from the purview of the I.D. Act. This position has been clarified by a Full Bench of the Kerala High Court as early as in 1982 in Umayammal V/s. State of Kerala- (1982 KLT 829). In Umayammal case, following the decision of the Supreme Court in Bangalore Water Supply case, the Full Bench of the Kerala High Court has held as follows : --

"From the observations of Justice Krishna Iyer and Chief Justice Beg it will not follow that merely because there is a provision in regard to temporary appointees as in Rule 9(a) of the Kerala State and Subordinate Services Rules, such appointment will stand excluded from the purview of the Act. In this connection we might note here S.25-J of the Act occurring in Chapter V-A. It reads as hereunder :

"25-J. Effect of laws inconsistent with this Chapter- (1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946):

Provided that where under the provision of any Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter."

In spite of S.25-J it may be possible to exclude the operation of the provisions of Chapter V-A of the Act by a positive provision in any new legislation. However one cannot say that Rule 9 of the K.S.S.R. is such a positive provision in any way repealing either expressly or by implication provisions in Chapter V-A of the Act as regards the temporary Government employees who are workmen coming within the ambit of the Act. It could not also be said that there is any inconsistency between the provisions in Chapter V-A of the Act and Rule 9 of the K.S.S.R.,

because of the time limit fixed for the period of continuance in service of a temporary appointee as per the said rule. Such time limit would certainly apply to a person who will not come within the ambit of the term "workman as defined in the Act."

11. I am of the considered opinion that in view of the decision of the Supreme Court in Telecom case (Supra) and that of the Full Bench of the Kerala High Court in Umayammal Case, the EDAs like the workman herein cannot be held as non-workmen under the I.D. Act.

12. On the merit of the dispute, the management would submit that the workman was taken only on adhoc basis till a regularly selected person is appointed and hence he has no right to continue in service. It is further submitted by the management that no appointment order was issued to the workman and his services were not terminated. MW1 has stated these facts. However, he has admitted that the workman had worked as EDDA at Kalladathur Branch for the period from 1-10-96 to 18-9-97. Therefore, it is an admitted fact that he had rendered more than one year continuous service within the meaning of Section 25-B of the I.D. Act. It was, therefore, mandatory to comply with the provisions of Section 25-F of the I.D. Act for terminating the services of the workman. Section 25-F is applicable to every workman irrespective of the fact whether he was employed temporarily or permanently. In view of Section 2(oo) of the I.D. Act, all kinds of termination of services of a workman for any reason whatsoever would amount to retrenchment, except the termination due to voluntary retirement, retirement on reaching the age of superannuation, termination on the ground of continued ill health, termination as a result of the non-renewal of the contract of employment or of such contract being terminated under a stipulation in that behalf contained therein. In the present case, even according to the management no appointment order was issued to the workman. Therefore sub-clause (bb) of Section 2(oo) is not applicable in the present case. If the appointment of the workman was as a stop-gap arrangement as claimed by the management, an appointment order stipulating such conditions should have been issued to the workman. In the present case, no such order has been issued and his services were terminated all of a sudden without giving any notice and now it is submitted by the management that the termination was on the ground that a regularly appointed person had assumed charge. By any stretch of imagination such termination can be justified as the same is not only in violation of Section 25-F of the I.D. Act, but also in violation of the principles of natural justice.

13. Even according to para 6 of EDA Conduct and Service Rules, it was incumbent upon the management to give one months notice or notice pay for the termination of services of an employee who has not rendered more than three years continuous service. Para 6 runs as follows :—

6. Termination of Services.

(a) The services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;

(b) the period of such notice shall be one month:

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the the period by which such notice falls short of one month.

NOTE—Where the intended effect of such termination has to be immediate, it should be mentioned that one month's basic allowance plus Dearness Allowance is being remitted to the ED Agent in lieu of the notice of one month through money order."

14. I, therefore, find that the termination of service of the workman herein is in violation of the above provisions of EDA Conduct and Service Rules also. Since Section 25-F of the I.D. Act is more beneficial than the above provisions of EDA Conduct and Service Rules, the former statutory provision shall prevail over the latter executive instruction.

15. The next point to be considered is whether the workman is entitled to continue in service. The workman has no case that he was appointed against the regular vacancy by following the procedure envisaged under EDA Conduct and Service Rules. Therefore, he is not entitled to claim continuous employment. He has to be replaced by a regularly appointed person. Therefore, it cannot be said that his services were terminated for extraneous reasons. However, as alrady observed hereinabove, he is entitled to the benefit of Section 25-F of the I.D. Act. In the present case, the management has not complied with Section 25-F.

16. The other relief to which the workman is entitled is the benefit of Section 25-G of the I.D. Act.

In the present case, the management has given the workman alternative employment as EDDA at Angadi Branch for the period from 29-9-97 to 31-3-98. The workman (WW1) himself has admitted that he had worked as substitute in various other post offices. Therefore, it cannot be held that there is violation of Section 25-G of the I.D. Act.

17. In any view of the matter, the workman is not entitled to claim regular employment under the management. He had already approached the Central Administrative Tribunal for this claim by preferring O.A.No.152/98 and as per the direction of that Tribunal, the management considered his candidature for regular post, but he was not selected. Therefore, no direction can be given in the present adjudication proceedings for regularising his services.

18. In the light of the foregoing discussion, I hold that the termination of services of the workman with effect from 18-9-97 is illegal and unjustified and he is entitled to the benefit of retrenchment compensation and one month's notice pay in terms of Section 25-F of the I.D. Act.

19. In the result, an award is passed in the aforesaid terms and reference order is answered accordingly.

Dated this the 22nd day of February, 2001.

B. RANJIT KUMAR, Industrial Tribunal

APPENDIX

Witnesses examined on the side of the Management.

MW1—Shri. M.P. Nirmalkumar.

Witnesses examined on the side of Workman.

WW1—Shri P.B. Sajeesh.

Documents marked on the side of Management.

Ext. M1Series—EDA Leave Applications submitted by V. P. Ajithakumari and connected papers. (4 Nos.)

Ex. M2(Series)—EDA Leave applications submitted by V. P. Ajithakumari and Connected papers. (3 Nos.)

Ext. M3 (Series)—EDA Leave application dated nil submitted by V. P. Ajithakumari and connected papers (3 Nos.)

Ext. M4– Copy of application in O.A. No. 152/1998 filed before the Central Administrative Tribunal, Ernakulam Bench.

Ex. M5—Copy of Order dated 29-1-98 in O.A. No. 152/1998 passed by Central Administrative Tribunal, Ernakulam Bench.

Documents marked on the side of Workman.

Ext. W1– Charge report dated 1-10-96 by which workman assumed the charge as EDDA, Kalladathur.

नई दिल्ली, 21 मार्च, 2001

का.आ. 780.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायलय कोन्जीकोड के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-03-01 को प्राप्त हुआ था।

[सं. एल-12012/358/94-आई आर बी-II]

सी. गंगाधरण, अवर सचिव

New Delhi, the 21st March, 2001

S.O. 780.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court, Kozhi Kode as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 9-3-01.

[No. 'L-12012/358/94-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

IN THE LABOUR COURT, KOZHIKODE, KERALA STATE

Dated this the 4th day of January, 2001.

Present :

SHRI E. D. THANKACHAN, B.A.,B.L.,

PRESIDING OFFICER

I.D.(C) No. 2/95

.....

Between :—

The Chairman,
Syndicate Bank,
H.O. Manipal-576 119. ..Management.

And :—

Sri K. Sankara,
S/o. Sri S. Gopalakrishna Bhat,
"Dasa Nivas", Ashoka Nagar,
Kasargode-671 121. ..Workman.

Representations :—

Sri E.M. Vijayan, Advocate, Calicut For Management
Sri K. Abdussalam, Advocate, Calicut..For Workman

AWARD

The Government of India vide Order No. 12012/358/94-IR(B-II) dated 19th April, 1995 referred to this court the industrial dispute between M/s. Syndicate Bank, Manipal (hereinafter called as the management) and its employee Sri Sankara (hereinafter called as the workman) for adjudication and passing

an award. The issue referred for adjudication is "whether the action of the management of Syndicate Bank, Manipal in dismissing Shri K. Shankara, Clerk/Typist, Badiarka Branch, from service with effect from 12-8-1993 is legal and justified? If not, to what relief is the said workman entitled".

2. The workman was employed as a Clerk/Typist under the management from May 12, 1977 onwards. While he was working in the Kasargode Branch of the management, charges were levelled against him on the allegation that he passed 3 cheques altogether amounting to Rs.10000/- for payment, without debiting the same to the respective accounts and that in order to cover up the misappropriation, he has falsified the registers and accounts. After conducting a domestic enquiry on the charges levelled and on the basis of the report of the Enquiry Officer, finding the delinquent workman guilty of the charges, the management dismissed the workman from service on 29-7-1993. The validity of his dismissal from service is challenged in the I.D. raised by the workman.

3. Pursuant to the notice issued by this court intimating the date of posting of the case, both sides appeared and submitted their respective statements

4. The claim statement filed by the workman is with the following averments:— The workman who commenced his employment under the management as a Clerk/Typist from May 12, 1977, had been discharging his duties to the utmost satisfaction of all concerned. On 31-8-1990 the management served him with a showcause notice foisting certain false and baseless allegations. The allegations in the show-cause notice were that while the workman was employed as a Clerk in the Kasargode Branch certain fraudulent transactions had taken place on 13-4-1989, 26-9-89 and on 6-7-1989 in passing 3 cash cheques (amounting to Rs.10000) for payment with out debiting to the respective accounts and that the above cheques were passed by the Supervisor Sri N.H. Pai, the Special Assistant, with his initials. The workman submitted his explanation on 10-11-1990. The entire transactions have been duly supervised and authenticated by the higher authorities and there was absolutely no foul play on the part of the workman After obtaining the reply of the workman the entire issue was closed finding that the workman was not guilty. But amazingly after a lapse of 9 months the workman was served with a charge-sheet dated 14-8-1991 based on the very same set of allegations raised in the show-cause notice. The workman again submitted a detailed explanation on 14-10-1991 denying the entire allegations. According to the workman the allegations are made as a result of a calculated attempt only to see that the workman is ousted from service somehow or other since the workman, who is an active member of the union protested against the illegal and anti-labour activities of the management. The workman being only a clerk, was not able to pass any of the cheques mentioned in the charge-sheet without supervision and authentication by the supervisors. The alleged cheques and the concerned ledgers had to be rooted through several superior officers before effecting the payment to the party concerned. The allegation is that the 3 cheques were paid in cash on 13-4-89, 29-6-1989 and 6-7-1989. Thus it can be seen that there is a gap of two months between the alleged first instance and second instance and that there is another gap of 3 months between the first instance and the third instance. It is strange to believe that although a cross-checking of the entire transactions is carried out in the bank almost all days, the alleged transactions were detected only on a very belated stage. It is not stated either in the show-cause notice or in the charge sheet, as to how the illegal transactions were detected by the management. Therefore, the allegations are calculated attempts to victimise the workman. The enquiry was conducted in a hapazard manner. Even though there was no evidence at all in the enquiry to show that the workman was guilty, the Enquiry Officer at the instance of the mangaement found the workman guilty. The cheques involved in the alleged transactions are loose cheque leaves, the issuance and passing of which were the responsibility of the supervisory staff. In the instant case Sri N.H. Pai is the person who had issued the loose leaves to the parties concerned and passed the cheques after verification of the relevant registers. Therefore he is equally responsible. The time gap of 9 months to issue charge-sheet clearly indicate the fact that it was an after-thought. It can be seen that Sri N. H. Pai is sought to be shielded since he was a close relative of the then Executive Director of the bank Sri R.S. Pai. It is significant to note that in the disputed cheques the signature of Mr. Pai alone is there. The explanation submitted by the workman was not considered by the management before issuing the charge-sheet. The finding of the Enquiry Officer is perverse and without any legal evidence. The workman has got 16 years of continuous meritorious and unblemished service under the management. He is hailing from a poor family and has to look after his family consisting of his aged parents, wife and school going children It is therefore, prayed that the court may be pleased to pass an award directing the management to reinstate the workman in service with backwages, continuity of service and with all other legal benefits.

5. In the statements submitted by the management the following contentions are raised: The averments in the claim statement are incorrect

baseless and devoid of any merit. In the show-cause notice issued by the management true allegations were made. The averments that the entire transactions have been duly supervised and authenticated by superior authorities and that there was no foul-play on the part of the workman is not correct The workman in fact has successfully manipulated the documents to prevent the detection of his fraudulent activities. The workman is trying to shield his illegal activities by raising frivolous contentiont. Instead of attempting to prove his innocence and disputing the allegations against him, he is raising false allegations against the superiors. The contention that he was not able to pass any of the disputed cheques without the supervision and authentication of supervisors is misleading. In fact the workman had succeeded in misleading the supervisors who were under the wrong impression about him during the relevant periods. Admittedly it is the workman who had issued tokens against the cheques, to the concerned parties knowing fully well that there is no amount in the bank in their account. Even if there is some time gap to detect the illegal activities of the workman, such time gap will not rescue the workman in any way. The allegation raised against the Enquiry Officer is false. The enquiry was in fact proper and the same proved that the workman is guilty of charges levelled against him. Sri N.H. Pai is not responsible for the misconduct alleged against the workman. At the most some omission can be attributed against the supervisor staff. In fact the workman misused the faith reposed on him by the superiors. Due to heavy workload Mr. N.H. Pai would not have been able to take extra care in the case of disputed transactions. It is true that concerned superior officers were not vigilant enough to trace out the misconduct. The evidence in the enquiry has conclusively proved the guilt against the workman and hence the finding of the Enquiry Officer cannot be said to be perverse as alleged by the workman. The statement that the punishment imposed is disproportionate to the gravity of the alleged misconduct is not at all correct. Therefore, the court has no power to interfere with regard to the punishment awarded. The management, therefore, prays that the court may be pleased to pass an award finding that the enquiry and the punishment awarded to the workman are proper.

6. In the rejoinder filed by the workman, almost the same averments in the claim statement are raised.

7. As the workman disputed the validity of the domestic enquiry conducted, my learned predecessor raised a preliminary point as follows :

> "Whether the domestic enquiry conducted against the worker is valid and proper."

Thereupon the Enquiry officer was examined a MW1 and the report of the enquiry and the file relating to the enquiry were marked as Ext. M1 and M2 series on the side the management. The evidence on the side of the workman is his deposition as WW1. After considering the evidence and all relevant aspects, my learned predecessor vide order dated 30th day of October 1998 found that the domestic enquiry conducted is valid and proper.

8. Now what remains to be decided is whether any interference by this court is sought for under Section 11 A of the Industrial Disputes Act on the punishment imposed on the workman, by the management.

9. The Point : The charge against the workman is as follows :

> "While he was working as a Clerk at our Kasargode branch and was posted in the Current Account Department, he got cheque No. 0988989, 0677187 and 0677188 amounting to Rs. 4,000, 4,000 and 2,000 respectively drawn on Current Account No. 930 and 923 paid across the counter without debiting the cheques to the respective accounts on which they were drawn and when the credit balance available in the Current Account No. 923 was not sufficient to meet the Cheques concerned and with a view to cover up his above alleged acts, he resorted to manipulation/falsification of various records/books of accounts of the branch as more fully described in the charge-sheet served upon the employee. He was thus charged for committing acts of gross misconduct of doing acts prejudical to the interest of the Bank in terms of/19.5(j) of the Bipartite Settlement."

It is significant to note that since the explanations submitted by the workman on the show-cause notice, was not found satisfactory a charge was framed against him as aforesaid. As the explanation submitted by the delinquent on the charge-sheet was not accepted by the disciplinary authority, the same being unsatisfactory, a domestic enquiry was ordered. In the enquiry, four witnesses have been examined and a number of documents marked on the side of the management, while the delinquent employee alone was examined on the side of the workman. After analysing the evidence in detail the Enquiry Officer arrived at a conclusion that the charges levelled against him are proved.

10. In order to interfere with the punishment awarded by involving Section 11 A of the Industrial Disputes Act it has to be considered as to whether the finding entered into by the Enquiry Officer is perverse or not. In other words, the important aspect to be considered is whether the findings entered

into by Enquiry Officer are based on legal evidence. As already pointed out, the charge against the worker in short is that while working as a Clerk at the Kasargode Branch of the management he got 3 cheques amounting to Rs. 4000, Rs. 4000 and Rs. 2000 each respectively drawn on current account No. 930 and 923 paid across the counter without debiting the cheques to the respective accounts on which they were drawn and the credit balance available in the current account No. 923 was not sufficient to meet the cheques concerned and that with a view to cover up his illegal acts the workman resorted to manipulation of various records of the branch.

11. Ext. M1 is the enquiry report and Exts. M2 series is the enquiry file. Before the Enquiry Officer, MW1 to MW4 were examined on the side of the management and DW1 was examined on the side of the workman. Exts. M. Ex. 1 to M. Ex. 31 were marked on the side of the management and D. Ex. 1 to D. Ex. 3 were marked on the side of the workman. There is an allegation by the workman, against the Enquiry Officer that the latter is biased and that he did not allow the worker to properly cross-examine the witnesses of the management and also to adduce evidence from ihe side of the worker himself. Nevertheless, these allegations were found to be false by my learned predecessor in the preliminary order dated 30-10-98.

12. The witnesses for the management before the Enquiry Officer are (1) S.S. Murudeshwar (MW1) who conducted the investigation in the matter in issue (2) Sri K.R. Ballai (MW2) who was the then Manager of Kasargode Branch, (3) Sri K. Babu Shenoy (MW3), the Assistant Manager, Kasargode Branch and (4) Sri N. H. Pai (MW4) the former Special Assistant, Kasargode Branch. DW1 is none other than the delinquent workman himself. It is seen from the enquiry report that the Enquiry Officer has considered, in detail the evidence recorded by him and finally, come to the conclusion that the workman is guilty of the charges levelled against him. I have gone through the statements of all the witnesses who were examined before the Enquiry Officer. MW1 to MW4 have in unequivocal terms, given evidence before the Enquiry Officer regarding the withdrawal of a sum of Rs. 10,000 by the workman as per M. Ex.4, M. Ex. 11 and M. Ex 14(a) cheques and also regarding the manipulation of records by him in order to cover up his acts. I find no reason to disbelieve such evidence of MW1 to MW4 which is discussed in detail by the Enquiry Officer in his enquiry report. The Enquiry Officer has also stated his reasons in the enquiry report, for arriving at a finding that the workman is guilty of the charges levelled against him. The reasons stated by him are convincing and free from doubt. The evidence of MW1 to MW4 is corroborated by the documentary evidence M. Ex. 4, M. Ex. 11 and M. Ex.14(A) and other relevant documents produced from the side of the management. It may be noted that after the act of workman was found out, the workman had remitted certain amounts in the current account from which he had withdrawn Rs. 10,000. His contention is that he recovered the money from the parties and remited the same to their respective accounts, vide M Ex. 24 and M Ex. 25 on their specific request. As has been mentioned by the Enquiry Officer in his report this contention cannot be accepted in any way for the sole reason that the defence did not take any pain to bring the parties either before the Enquiry Officer or before this court to give evidence in support or such a contention. It can be seen that the documentary evidence at hand would go to show that the workman in fact has successfully manipulated the accounts to prevent the detection of his fraudulent activities. Instead of proving his innocence he was bent upon raising allegations against the superiors. The evidence at hand would go to show that the workman had succeeded in misleading his superiors who were under a wrong impression about him during the relevant period. It is a fact admitted that the workman himself had issued token against the cheques to the concerned parties knowing fully well that no amount in the bank in their account was available for honouring the cheques.

13. It is true that some omission on the part of superior officers such as M.H. Pai (MW4 in the enquiry) in conducting proper supervision and authentication regarding the cheques on the basis of which the amount was drawn by the employee, as alleged. This laches was taken advantage of by the workman by misusing the faith reposed on him by the superiors. May be it true that, due to heavy workload, the superiors would have been not able to take extra care in the case of disputed transactions and that they may not have been more vigilant enough to trace out the misconduct. But the same cannot be allowed to be taken as a defence to cover up the misconduct on the side of the workman. I have carefully gone through the enquiry file as well as the enquiry report. Nothing is there to discard the same in any way. I, therfore, hold that the finding entered into by the Enquiry Officer is not at all perverse.

14. It has been brought out that there are certain laches and lack of supervision on the part of the superior offi cers. Had the superiors been vigilant in supervising the day-today affairs properly, the misconduct as reported against the workman would have been found out in time and prevented. It is

born out inevidence that there is a gap of months together to find out the misconduct. In view of the laches on the part of the superiors, I hold that it is just and proper to show some leniency to the workman. I arrive at such a conclusion on the basis of the fact that he is aged only 45 years and also in view of the reason that during his 16 years of service in the bank no other allegation is levelled or proved against him. I, therefore, hold by invoking the provision laid down under Section 11 (A) of the Industrial Disputes Act, that the ends of justice will be met if, instead of dismissal of the workman he is discharged so that he may get the benefits for the period of his work in the management and may seek some other job for his daily bread of himself and that of his family.

15. In the result, an award is passed converting the punishment of dismissal from service of the workman into that of discharge.

Dictated to the Confidential Assistant transcribed by him, revised, corrected and passed by me on the 4th day of January, 2001.

E. D. THANKACHAN, Presiding Officer

APPENDIX

Witnesses examined on the side of the Workman :—
WW1—K. Shankar, S/o. Gopalkrishnan.
Witnesses examine on the side of the Management :—

MW1—Harsh Mudhkal, S/o. R.K. Mudhkal.
Documents marked on the side of the Workman :—
NIL.

Documents marked on the side of the Management :—
Ext. M1—Enquiry Report.
Ext. M2—Enquiry File.

नई दिल्ली, 21 मार्च, 2001

का.आ.—781. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबन्धतन्त्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-3-2001 को प्राप्त हुआ था ।

[सं. एल-12012/301/93-आई आर (बी-II)]
सी. गंगाधरण, अवर सचिव

New Delhi, the 21st March, 2001

S.O.781.—In Pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Indian Overseas Banks and their workman, which was received by the Central Government on 19-3-2001.

[No. L-12012/301/93-IR(B-II)]
C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU, CHENNAI—104

Monday, the 19th day of February, 2001

Present :

THIRU S. R. SINGHARAVELU, B.Sc.B.L.
Industrial Tribunal

Industrial Dispute No. 92 of 1994

(In the matter of dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workman and the Management of Indian Overseas Bank, Madras).
Between

Shri E. Manickam,
No. 57, Madha Koil Street,
Mahabalipuram, Chengai M.G.R. District,
Pin 603 104.

And

The General Manager,
Indian Overseas Bank,
763 Anna Salai,
Chennai—600 002.

REFERENCE : Order No. L-12012/301/93-IR(B-II dated 2-3-94, Ministry of Labour, Govt. of India, New Delhi.

. . . . .

This dispute coming on for final hearing on Tuesday, the 23rd day of January, 2001, upon perusing the reference, Claim and Counter statements and all other material papers on record and upon hearing the arguments of Thiruvalargal Aiyar and Dolia and R. Arumugam, Advocates appearing for the Workman and of Thiruvalargal N.G.R. Prasad, S. Vaidyanathan, advocates appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

The Govt. of India has referred the following issue for adjudication by this Tribunal :

"Whether the action of the Management of Indian Overseas Bank, Madras in discharging Sri E. Manickam, Shroff/Godown Keeper, from service with effect from 25-8-89 is justified ? If not, what relief is the workman entitled to ?"

2. The main averments found in the Claim Statement of the Petitioner are as follows :

The Claimant is a workman employed by the Respondent bank, having been appointed as Shroff/ Godown Keeper at its Mahabalipuram branch on 10-8-1977. The respondent bank served on him a Charge sheet and suspension order vide its letter dated 13-7-1988. After enquiry and show cause notice etc. the petitioner was discharged from service of the bank on 25-8-89. The first charge in effect says that the claimant abused his position of Shroff/ Godown Keeper and altered the relative entry in the Officer's cash Scroll to read as 'loan 88/85, (b) he had not posted the said credit voucher in loan account 112/86 but made a fictitious credit entry in his wife's loan A/c. No. 88/85, in order to make wrongful gain to his wife and a wrongful loss to the bank and (c) he had also forged the initials of the officer against the said ledger entry in his wife's account. The reasoning are based on suspicions and doubts. Officer's scroll is always in the custody of the officer concerned and the claimant cannot have access to it. It is however a fact that the claimant made a wrong posting and such mistakes do occur in any original work especially due to admittedly heavy pressure of work. The wrong credit to loan A/c. 88/85 was cancelled and the same credit was given to Mr. Jainulabdeen's Loan Account, for the loan account No. 112/86 was by then closed. It is incorrect to conclude that such wrong posting would only mean wrongful gain to the loan account of his wife. Missing of this cash (credit) voucher might be a fact though not admitted. But it was not brought out at the enquiry that the claimant has had anything to do with it. The Second Charge is that (a) the claimant came to know that the officials of R.O. detected the aforesaid unauthorised credit, (b) hence the very next day he had taken the loan ledger from the Branch Manager on the pretext of tallying the loan balances, etc. It is the Manager who entrusts the work to clerical staff. Hence he was asked to do the tallying of the ledger in question. The DA/ EO has given twist to what has actually happened to hold him guilty of the charge. The Third Charge is that (i) On 9-11-87 he had taken Cash advance of Rs. 2,000/- for exchanging cut-notes during cash remittance to Currency Chest at Cathedral Branch of the respondent. (ii) he had detailned it for his own use till 14-12-87 though he should have remitted it back immediately the next morning. When the cut notes are returned, they are to be exchanged separately by lodging claim to the Reserve Bank of India. No body reminded the claimant for remittance of this money back at the branch. He has made the credit of this Rs. 2,000/- of his own accord on 14-12-87. The respondent has not proved that the funds were retained by the claimant for his own use. There is no evidence that claimant altered the cash scroll which is always in the custody of an officer. He cannot have access to it until the officer himself hands it over to him. The respondent condoned his misconduct in its final order. Having condoned his alleged misconduct, the respondent is not correct to impose on him any punishment and more particularly the punishment of denying him his bread and livelihood. The respondent ought to have seen that the D.A./E.O. should have examined the daftry of the branch, Mr. P. Muthusamy, who was alleged to have hinted about the suspense transaction to MW2. It is therefore prayed that this Tribunal may be pleased to pass an award holding that the action of the respondent in discharging the claimant from service w.e.f. 25-8-89 is not justified.

3. The main averments found in the Counter Statement of the Respondent are as follows :

One Shri Kather Batcha, borrower, having small loan A/c. 112/86 at Mahabalipuram branch of the respondent bank remitted a sum of Rs. 200/- to his loan account on 20-1-88. The claimant while working at Mahabalipuram branch, abused his position as Shroff/Godown Keeper of the branch and altered the relative entry in the Officer's Scroll to read as loan 88/85. The claimant had not posted the said credit voucher in the loan account 112/86 for which it was intended; but the claimant made a fictitious credit entry in his wife's loan account No. 88/85 for the same amount on 21-1-88 in order to make a wrongful gain to himself and his wife and a wrongful loss to the bank. (b) when the claimant came to know that the officials of Regional Office, Vellore of Respondent bank detected during their visit to the branch on 19-5-88 and 20-5-88 the aforesaid unauthorised credit, the very next day, the claimant had taken the loan ledger from the Branch Manager on the pretext of tallying the loan balances and scored off the aforesaid unauthorised credit entry and alter the respective balances in the ledger and in the loan balance book. (c) On 9-11-87, the claimant took cash advance of Rs. 2,000/- from the branch for enabling him to exchange the cut notes if any during cash remittance made to Currency Chest of Cathedral branch on the same day (9-11-87). As soon as the Cash remittance was over, the claimant should have remitted back the advance taken by him to the branch immediately by next norming. But the claimant had retained the said bank's money with him for his own use, till 14-12-87 i.e. for more than a month. Under the circumstances, the Disciplinary Authority had rightly concluded that the credit entry made into the claimant's wife's loan account was not at all a mistake but was made with a malafide intention. The averments that a credit of just a sum of Rs. 200/- cannot alter the overdue nature of the account, is

denied. Whatever might be the amount, the fact that the claimant chose to credit the amount in the loan account of his wife clearly established that the claimant did it to make wrongful gain. The documentary evidences coupled with the evidence of MW1 and MW2 established that it was the claimant who altered both the entries i.e. entry in the loan account No. 88/85 as well as Officer's scroll, with Ajanta Rose colour ink. The averments that the claimant has had nothing to do with the missing of the Credit voucher, is denied. It may be observed from the records of the enquiry proceedings that the alterations were made by the claimant in the intervening period after the detection of the unauthorised credit entry by Regional Office officials during their visit to branch on 19-5-88 and 20-5-88 and before regular investigation commenced in the branch on 23-5-88. The reasons assigned by the Inquiring Authority/ Disciplinary Authority for arriving at the conclusion that the charges are proved, are reasonable and convincing and the findings have been arrived at by the Inquiring Authority based on clear evidence and proof in the enquiry. The claimant admits that the cash advance of Rs. 2,000/- taken by him on 9-11-87 from the branch for exchange of cut notes during cash remittance work at Cathedral branch was remitted back by him only on 14-12-87. The claimant should have returned the money on 9-11-87 itself immediately after completion of the work. The withdrawal of money from the bank and retention of the same were done by the claimant solely for the purpose of deriving pecuniary gain for himself and this clearly amounted to misappropriation of bank's money. The charges proved against the claimant are serious in nature showing moral turpitude on the part of the claimant. The claimant being a bank employee should have shown utmost honesty and integrity in the discharge of his official duties, particularly with his dealing with public. As public money was involved and as the act committed by the claimant were serious in nature, the respondent has lost confidence in the claimant and therefore the claimant was discharged from service. The respondent therefore prays that this Hon'ble Tribunal may be pleased to reject the claim of the claimant, and give an award, confirming the order of discharge.

4. The main averments found in the Addl. Counter Statement filed by the Respondent are as follows :

The petitioner herein was found guilty of the Charge of making a fictitious entry of Rs. 200/- in his wife's loan account No. 88/85 and also of the Charge of making a wrongful gain to his wife and wrongful loss to the bank. The petitioner further forged the initial of the officer against the credit entry made in the ledger relating to his wife's loan account. When the authorised credit entry was detected by the officials of the Regional Office, Vellore, the petitioner scored off the said entry and altered the balance in the ledger and in the loan balance book. The Disciplinary authority took a lenient view and awarded him only a punishment of discharge from Bank's service. The question of discrimination will arise only when a common charge sheet is issued to various persons on same set of facts and some charge sheeted officials are let off or awarded with a lesser punishment, and some officials are awarded severe penalty. When a punishment is awarded, several factors have to be taken into consideration mitigating circumstances, subsequent behaviour, the past conduct and the repentence or tendering apology are all important circumstances which normally influence awarding of punishment. In the cases mentioned by the petitioner in his affidavit, the circumstances existing were different. Merely because a lesser punishment was given in these cases, it does not mean the Disciplinary Authority should have awarded the same punishment in the present case also. The respondent prays to dismiss the claim of the petitioner.

5. On behalf of Respondent/Management, Ex. M1 to M109 were marked by consent. No witnesses were examined for both sides.

6. The point for consideration is : Whether the action of the Management of Indian Overseas Bank, Madras in discharging Sri E. Manickam, Shroff/ Godown Keeper, from service with effect from 25-8-89 is justified ? If not, what relief is the workman entitled to?

7. THE POINT : The petitioner is a workman employed by the Respondent Bank having been appointed as Shroff/Godown Keeper at its Mahaballpuram branch on 10-8-1977. He was terminated from the service w.e.f. 25-8-89 for the misconduct said to have been proved in a Domestic enquiry. The contention of the claimant that he had good antecedents and appreciable past record will not go to help him, if there is proved misconducts involving the fiscal matter of the bank. This is so because in banking business absolute devotion, deligence and integrity are to be preserved and in the absence of which the confidence of the depositors will get impaired and as a result there will be peril of the banking business.

8. Again the claim of the petitioner that some other members of the staff were given lesser punishment for the misconduct is also unacceptable because facts and circumstances should be symmetrically identical in order to make a comparison. The case of other are dealt in Documents produced by the management and a careful perusal of those records will go to show that the facts involved thereunder are quite different from the facts constituting the alleged misconduct on the part of the petitioner.

9. We will have to examine the contents of Ex. M35 which is the record of finding in respect of the Charge Sheet dt. 13-7-88 issued to this petitioner. Ex. M1 to M33 and oth r record, were found' to h ve been relied upon by the Enquiry Officer in arriving at the findings. The Charge sheet was marked as Ex. M1 which reads as follows :

1. It is reported that one Shri Kather Batcha, borrower having small Loan A/c. No. 112/86 remitted a sum of Rs. 200/- to his loan account on 20-1-88. You abused your position as Shroff/Godown Keeper of the branch and altered the relative entry in the Officer's Cash Scroll to read as 'Loan 88/85'. You have not posted the said credit voucher in the loan A/c 112/86 for which it was intended but you had made a fictitious credit entry in your wife's loan Ac. No. 88/85 for the same amount on 21-1-88 in order to make a wrongful gain to your wife and awrongful loss to the bank. You had also forged the initials of the officer against the said ledger entry in your wife's account.
2. When you came to know that the officials of Regional Office, Vellore detected during 19-5-88 and 20-5-88 the aforesaid unauthorised credit; the very next day you have taken the loan ledger from the Branch Manager, on the pretext of tallying the loan balances, and you scored off the aforesaid unauthorised credit entry and altered the respective balances in the ledger and in the loan balance book. You had also made posting of a credit entry for Rs. 200 as of 20-1-88 into the loan A/c 92/87 standing in the name of Shri A. K. Jainallabdeen and altered the balance in the account.
3. It is reported, that on 9-11-87 you had taken cash advance of Rs. 2,000 from the branch for enabling you to exchange the cut notes, if any, during cash remittance made to Cathedral Currency Chest of the bank on the same day (on 9-11-87). As soon as the Cash remittance was over, you should have remitted back the advance thus taken by you, to the branch immediately by next morning. But you had detained the said bank's money, with you for your own use, till 14-12-87.
4. It is alleged that you have stolen the two DBP instruments (cheques) from the branch in order to avoid despatch of the said instructions to the respective drawee banks.

The reply to the Charge sheet was marked as Ex. M2. Copy of the letters addressed to the petitioner were marked as Ex. M3 to M5. Now we will have to peruse the documents of Loan No. 88/85 dt. 12-6-85 more particularly found in Ex. M6 and Ex. M107.

10. According to the case of the Management, one Sri Khader Basha, borrower as a Small Loan No. 112/86 at Indian Overseas Bank, Mahabalipuram branch remitted a sum of Rs. 200 to his Loan account on 20-1-88. The petitioner while working at Mahabalipuram branch was said to have altered the related entry in the Officers' Scroll to read as Loan No. 88/85. It is found that Loan A/c 88/85 belongs to the wife of the petitioner. The petitioner was said to have correspondingly made a fictitious credit entry in his wife's A/c on 21-8-88 for the same amount of Rs. 200 paid by Khader Basha. It is said that the petitioner had also correspondingly forget the initial of the officer against the said ledger entry in his wife's account. Some how or other the officials of the Vellore branch of Management bank have detected on 9-5-88 the alleged fraud committed by the petitioner. It is said that the very next day the petitioner had taken the loan ledger from the Branch Manager and scored off the unauthorised credit entry and altered the amount of balance in the ledger and Loan balance book also. It is said that the petitioner had correspondingly made posting of credit entry for Rs. 200 as on 20-1-88 into the loan account No. 92/87 standing in the name of another Sri A. K. Jainallabdeen.

11. MW1 Sri J. Jagadeesan deposed in domestic enquiry that he had visited the Mahabalipuram branch on 9-5-88 and happened to find an unauthorised credit entry in Small Loan 88/85. Exhibit M7 is the case sheet signed by him relating to the above account which admittedly belong to the wife of the petitioner. The set of loan documents relating to the grant of loan to the wife of the petitioner were found in Ex. M6 and M107. They were perused by MW1. The petitioner was found in that document as a guarantor of loan granted to his wife. It is made clear from the evidence of P. Subramania Rao, MW2 in the domestic enquiry that the said loan was sanctioned by Mr. P. Loganathan, the earlier Manager. From Ex. M8 which is Small Loan Ledger IV (Folio 172), it is evident that the figure 26 was altered to read as 21 and the amount of Rs. 200 once posted was struck of and again over within the same sum. As evident from Ex. M8 there was no repayment in the Loan Account since granting till June 1986. The Load account was then carried over to Ledger Ex. M9 wherein there was only one credit entry. In fact, the date of correction involved in Ex. M8 as 26-1-88 was a Bank holiday due to Republic day. This Small Loan Supplementary marked as Ex. M10 which would disclose that there was actually no credit entry on 21-1-88 at all. In this connection, MW1 Thiru M. J. Jagadeesan who had inspected the above deposed that his effort of checking for all the entries of Rs. 200 during this period made him to come across Rs. 200 entry dated 20-1-88 in the Supplementary relating to Account No. 112/86 on the account of Khader Basha. When he verified this Loan Account the said entry of Rs. 200 dated 20-1-88 did not find place. in the Ledger SL III follo 23, which was marked as Ex. M11. On perusing Exs. M39 and M40 which are the Cash Scroll of the Branch from 1-12-87 and receiving Counter Cash Book of the Branch from 3-12-87 respectively. It could be seen that Rs 200 was received by the Cashier in respect of SL 112/86 (Receipt No. 12). The Cashier who had signed Ex. M40 in pages 121 and 122 was found as Sri Narasima Raghavan but in Ex. M39 it was found that there was a material alteration in Loan Number to read as Account No. 88/85. It was

found in Ajantha Colour Rose Ink which according to the witnesses of the management was used only by the petitioner.

12. The Counsel for the Petitioner argued that the Ajantha Colour Ink could have been used by any one and that there is no proof to hold that it was exclusively used by the petitioner. When MW1 and MW2 would say this we may have to take it true unless there is any motive for them against the petitioner. No motive was attributed against MW1 and MW2. In the official activities any member of the staff could be able to say the method and manner of use and the individual using the particular kind of pen with exceptional colour. When they categorically said that it was exclusively used by the petitioner we cannot but believe it, since there is motive. It is not also as if this alone individually is going to prove the misconduct against the petitioner. When other links correctly fit in and when they were proved by oral evidence of MW1 and MW2 we may have to rather believe the same and come to a necessary conclusion that this petitioner alone committed the mistake. Above all Khader Basha the Account holder of 112|86 was said to have told MW1 that he remitted Rs. 200 on 20th January, 1988 to his loan account. Thus it is proved that the petitioner had posted the credit entry of payment of Rs. 200 made by Khader Basha to Account No. 88/85 which belongs to his wife. He has also altered the Officers' Scroll to that effect as found in Ex. M30. As discussed supra, apprehending that it had already come to light the petitioner seem to have re-corrected and while things were thus done even false entry on 26-1-88 were also made. As the documents were exclusively in the custody of the petitioner and he had to do such functions in the ordinary course of business, it is made clear that he alone did it. Needless to say that it is for dishonest purpose of enriching with others money this misconduct touching the fiscal matter, was committed. Further financial loss was also caused to Khader Basha. To put it again the evidence of MW1 in the Domestic enquiry revealed that Sri Khader Basha remitted Rs. 200/- on 20-1-88 to his Loan Account 112/86. Ex. M18 is the Counterfoil for the remittance. Ex. M10 is the relevant Loan Supplementary. Ex. M33 the Investigation report also corroborate this fact. Ex. M11 shows that the said entry was not posted in the ledger by petitioner. As such, the fact remains that the petitioner had not posted the said credit voucher in the Loan Account 112/86. Ex. M9 coupled with the deposition of MW1 and MW3 prove that the said entry was posted to Loan A/c 88/85 belonging to the wife of the petitioner. MW2 also identified the initial in Ex. M9 as that of petitioner. The petitioner contended that he had wrongly posted the entry in A/c 88/85 by oversight. How could the guarantor in Small Loan No. 88/85 namely the petitioner could do it without any mala fide motive. Any reasonable person could not believe it. Irrespective of the fact as to whether this subsequent corrections made was proved or not the fact remains that wrong posting of credit amount was made by petitioner with mala fide motive. Thus the Charge No. 1 is found partly proved.

13. So far as the Charge No. 2 is concerned, the perusal of the Photo copy of the Ledger folio of 88/85 marked as ME. 16 in the domestic enquiry, was corroborated by the deposition of MW2 that he gave the petitioner the ledger containing Ex. M9. When MW3 brought the ledger and balance book from the petitioner, he found that the entry was cut off completely. According to MW3 petitioner told him that the later scored off the same and had posted it in the other Account No. 92/87. This will go to prove that the petitioner had taken the Loan ledger from the Manager. Thus it is seen that on the pretext of tallying the loan balance, the petitioner had scored of the said unauthorised credit entry and altered in the ledger. Documentary evidence through Ex. M11, M19 and M33 do show the above fact. In the letter of petitioner under Ex. M32 he had admitted the same. Since MW2 and MW3 in the domestic enquiry had deposed that they have seen the alterations made in the Balance book by petitioner and since there is no motive for them to make false statement it has to be normally believed. The other evidence both oral and documentary discussed supra will also corroborate the same Thus Charge No. 2 also got prove.

14. So far as Charge No. 3 is concerned, it is found that on 4-11-87 the petitioner took cash advance of Rs. 2000/- from the branch for enabling to exchange the Cut notes if any during cash remittance made on the same day. As soon as the Cash remittance was over, petitioner should have remitted back the advance next morning. But the petitioner had retained till 14-12-87. In this connection, the Branch Suspense Register marked as Ex. M100 and suspense voucher marked as Exs. M20 and M21 evidenced that the petitioner had taken cash advance of Rs. 2000/- on 9-11-87, for enabling him to exchange cut notes. Ex. M21 coupled with the Suspense register marked as Ex. M100 would go to show that the petitioner paid back the said advance on 14-12-87. After remittance of Cash on 9-11-87, the petitioner should have remitted back the Suspense Account on the next morning i.e 10-11-87. The deposition of MW2 found in the Domestic enquiry that the petitioner himself took suspense balance on 30-11-87 would reveal that the petitioner is aware of the said outstanding and it was well within his knowledge. It would establish the petitioner mala fide intention of retaining bank's money of Rs. 2000/- with him till 14-12-87. Thus the Charge No. 3 is also proved. The 4th charge was found not proved in the domestic enquiry itself. So we need not go into it.

15. The Learned Counsel for the Management relied upon 1999 II LLJ p.194 wherein the Clerk in Bank dismissed from service on proved misconduct of crediting his account with money that should have been credited to the account of the customer and withdrawing such money for utilising himself; it was held that the confidence of customer is paramount for the success of bank business; continuing in employment a person who committed fraud on customers would be prejudicial to the interest of bank it was further held that the Industrial Tribunal is a judicial form and the discretion vested to interfere with the

quantum of punishment should be judicially exercised; discretional power does not mean licence to direct reinstatement and that the Industrial Tribunal cannot interfere with quantum of punishment if proved misconduct is grave in nature.

The facts of the above case are similar to the present case. Therefore, the above findings will be applicable to the present case also.

16. Similarly, in 1998 III LLN 632, it was held that a bank employee discounting his own cheques and allowing Overdrafts in excess of his power had committed serious misconduct and was dismissed.

17. Similarly in 1996 (9) Supreme Court Cases p.69 it was held that Acting beyond one's authority was misconduct within the meaning of Rule 24 of Central Bank of India Officers Employees Regulations and allowing Overdrafts or passing cheques involving substantial amount beyond his authority should not be treated as error of judgement. Again in 1998 III LLN p.89, it was held that in banking business absolute devotion, diligence and integrity need to be preserved by every bank employee and if this is not observed confidence of depositors would be impaired and it was held in 2000 II LLN p.1395 that once misappropriation stood proved, showing sympathy is uncalled for, it was described in 1997 I LLN 391 as misplaced sympathy.

18. So, in this case, Section 11A of the Industrial disputes Act, 1947 could not be applied. The dismissal of the petitioner is thus found justified. Award passed accordingly. No costs.

Dated at Chennai, this 19th day of Feb. 2001

S.R. SINGHARAVELU, Industrial Tribunal.

I.D.No. 92/94

Witnesses Examined

For Petitioner/Workman : None

For Respondent/Management : None

DOCUMENTS MARKED

For Petitioner/Workman: : Nil

For Respondent/Management:

Ex.M1 13-7-88 : Charge sheet cum-Suspension order issued to the claimant.

Ex.M2 2-9-88 : Copy of the claimant's reply to the charge sheet.

Ex.M3 13-9-88 : Inquiring Authority's letter to the claimant.

Ex.M4 13-9-88 : Copy of the Telegram sent to the claimant by the Inquiring Authority.

Ex.M5 14-9-88 : Copy of the letter sent to the claimant by the Inquiring Authority.

Ex.M6 12-6-85 : Copy of the loan documents in Loan No.88/85.

Ex.M7 .. : Case sheet relating to Small loan No.88/85.

Ex.M8 .. : Copy of S.L. Ledger 4 Folio 172

Ex.M9 .. : Copy of S.L. Ledger II Folio 107.

Ex.M10 .. : Copy of S.L. Supplementary

Ex.M11 .. : Small Loan Ledger III Folio 23.

Ex.M12 7-9-98 : Copy of the letter of the Manager of Mahabalipuram branch addressed to Central office.

Ex.M13 21-9-88 : Copy of the letter of the Inquiring Authority to the claimant.

Ex.M14 22-9-88 : Copy of the Telegram sent by the Inquiring Authority to the claimant.

Ex.M15 22-9-88 : Copy of the letter of the claimant to the Inq.Authority with enclosure.

Ex.M16 19-9-88 : Copy to the letter of the claimant to the Inquiring Authority.

Ex.M17 22-9-88 : Postal Authority's intimation reg. Telegram

Ex.M18 19-1-88 : Copy of the Counterfoil for Rs. 200/-

Ex.M19 .. : Copy of S.L. Ledger III relating to A/C 92/87

Ex.M20 9-11-87 : Debit Suspense Voucher.

Ex.M21 14-12-87: Credit Suspense Voucher

Ex.M22 21-4-88 : Copy of Withdrawal slip for Rs. 2000/-

Ex.M23 .. : Copy of D.B.P. Register Folio 110, 111, 196, 197, 322, 323.

Ex.M24 2-5-88 : Dr.D.B.P. Voucher for Rs. 2000/-

Ex.M25 14-2-87 : Credit S.B. Voucheer for Rs. 2000/-

Ex.M26 21-4-88 : Withdrawal slip for Rs. 2000/-

Ex.M27 31-5-88 : Cr.Cash D.B.P.(1) Voucher for Rs. 650/-

Ex.M28 31-5-88 : Credit cash D.B.P. (1) Voucher for Rs. 2000/-

Ex.M29 31-5-88 : Letter by Shri A. Manoharan addressed to Manager I.O.B. Mamallapuram.

Ex.M30 31-5-88 : Letter from Shri N. Raj, addressed to Manager, I.O.B. Mamallapuram.

Ex.M31 23-5-88 : Copy of letter of the Manager, I.O.B. Mamallapuram to the Regional Manager.

Ex.M32 23-5-88 : Copy of the letter of the claimant to the Regional Manager, I.O.B. Vellore.

Ex.M33 3-6-88 : Investigation Report of Shri Sriraman Officer of R.O. Vellore.

Ex.M34 13-9-88 to 23-2-89 : Enquiry Proceedings

Ex.M35 27-6-89 : Findings report of the Inquiring authority

Ex.M36 28-6-89 : Notice to the Claimant on the Show cause hearing

Ex.M37 25-8-89 : Original order of the Disciplinary authority

Ex.M38 19-10-89: Order of the Appellate Authority.

Ex.39 1-12-87 : Cash Scroll of the branch

Ex.M40 .. : Receiving Counter cash Book for the period 3-12-87 to 20:-1-88

Ex.M41 .. : Suspense Balance book from 9-11-87 to 14-12-87

Ex.M42 21-8-87 : D.B.P. referred register containing the following Entry.

DBP No.	Favouring	Amount Drawn on
588/87	N. Raj	Rs.650/- Canara Bank
SB 3674		Therukazhukundram

Ex.M43 21-8-87 : DBP referred register containing the following entry:

DBP No.	Favouring	Amount Drawn on
964/87	A.Manoharan	Syndicat Bank
SB 6693		2000/-Teynampet

Ex.M44 .. Small loan Balance book showing the balance in SL 85/85 as on the close of January '88

Ex.M45 13-5-88 Charge sheet cum Suspension order

Ex.M46 24-4-89 : Original order passed by the Disciplinary authority

Ex.M47 15-9-89 : Appellate order passed by the Appellate authority

Ex.M48 13-3-89 : Charge sheet cum Suspension order issued to Sri A.R. Kesa Kirthanam

Ex.M49 12-3-90 : Findings of the Enquiry Authority.

Ex.M50 16-6-90 : Order passed by the Disciplinary authority.

Ex.M51 11-11-96: Charge sheet issued to Sri A.G.-Sathya Narayana.

Ex.M52 8-10-97 : Additional Charge sheet

Ex.53 31-12-97 : Original Order passed by the Disciplinary Authority

Ex.M54 18-6-96 Charge sheet cum Suspension order issued to Sri Uthamasigama E.

Ex.M55 22-10-96 : Addl. Charge sheet

Ex.M56 31-3-97 : Original order passed by the Disciplinary authority

Ex.M57 11-6-97 : Appellate order passed by the Appellate authority

Ex.M58 2-1-91 : Charge sheet cum Suspension order issued to D. Mathivanan

Ex.M59 29-9-91 : Enquiry officer's findings

Ex.M60 9-3-92 : Original order passed by the Disciplinary authority

Ex.M61 20-5-92 : Appellate order

Ex.M62 28-9-89 : Charge sheet issued to Sri N. Rengamani

Ex.M63 .. : Findings of the Enquiry authority

Ex.M64 9-6-92 : Original order passed by the Disciplinary authority

Ex.M65 25-6-84 : Charge sheet issued to Sri K. Balachandran Officer of Wal Tax Road branch

Ex.M66 10-7-84 Additional Charge sheet issued to K. Balachandran

Ex.M67 29-8-88 : Original order of punishment issued to Sri K. Balachandran

Ex.M68 30-6-89 : Appellate order in respect of the above Charge sheet

Ex.M69 8-4-87 : Charge sheet issued to Sri G.K.-Panda, Officer of KURDA branch

Ex.M70 21-12-87: Addl. Charge sheet issued to Sri G.K. Panda.

Ex.M71 17-8-88 : Second addl. Charge sheet issued to G.K. Panda

Ex.M72 21-12-89 : Original order of Punishment issued to Sri G.K. Panda

Ex.M73 9-7-91 : Appellate order in respect of the above

Ex.M74 17-6-83 : Charge sheet issued to Sri Sivasankaran, Cahsier of Esplanade branch

Ex.M75 : 14-12-87 : Original order of Punishment issued to Sri Sivasankaran

Ex.M76 10-6-88 : Appellate order in respect of the above

Ex.M77 : 24-5-85 : Charge sheet issued to Sri C. Dharmaraj Shroff/Bill collector of Kottar branch

Ex.M78 28-3-87 : Original order of punishment issued to Sri Dharmaraj

Ex.M79 4-5-87 : Appeal preferred by Sri Dharmaraj

Ex.M80 17-3-88 : Appellate order issued to Sri Dharmaraj

Ex.M81 29-9-87 : Charge sheet issued to Sri K. Ganesan/Clerk/Typist of Saidapet

Ex.M82 15-6-88 : Original order of Punishment issued to Sri K. Ganesan.

Ex.M83 15-6-88 : Appeal preferred by Sri K. Ganesan

Ex.M84 1-8-88 : Appellate order issued to Sri K. Ganesan

Ex.M85 : 14-8-85 Charge sheet issued to Sri P. Rajasubramaniam, Manager, Narikudi Branch.

Ex.M86 8-12-86 : Original order of Punishment issued to Sri P. Rajasubramaniam

Ex.M87 13-3-87 : Appeal preferred by Sri P. Rajasubramaniam

Ex.M88 17-2-86 : Charge sheet issued to Sri R.G. Jegadeesan, Cashier, Kodakkal branch

Ex.M89 26-8-87 : Original order of Punishment issued to R.G. Jagadeesan.

Ex.M90 12-1-88 : Appellate order in respect of the above.

Ex.M91 23-12-87 : Charge sheet issued to Sri R.N. Khanna, Shroff/Typist of SAS Nagar branch

Ex.M92 22-3-89 : Original order of Punishment issued to R.N. Khanna

Ex.M93 20-10-89 : Appellate order in respect of the above

Ex.M94 13-9-86 : Charge sheet issued to Sri V.R. Santhanam

Ex.M95 31-10-87 : Original order of Punishment issued to Sri V.R.Santhanam

Ex.M96 4-4-89 : Appellate order in respect of the above

Ex.M97 18-7-87 : Charge sheet issued to Sri Gangasaran Singh Shroff/Clerk of R.K.-puram branch

Ex.M98 21-12-87 : Original order issued to Sri Gangaseran Singh.

Ex.M99 19-8-88 : Appellate order in respect of the above

Ex.M100 9-11-87 to 14-12-87 Suspension Register (Xerox)

Ex.M101 2-9-88 : Reply of the Charge sheeted employee to the Charge sheet.

Ex.M102 9-5-88 Letter of the Bank to the Petitioner.

Ex.M103 30-6-87 -do

Ex.M104 27-1-87 -do-

Ex.M105 19-8-87 -do-

Ex.M106 12-11-79 -do-

Ex.M107 12-6-85 Photo copy of the loan ledger relating to SL 88/85 of Mrs. Gnanavalli, W/o the petitioner marked as ME 16 in the enquiry.

Ex.M108 .. Suspense Balance book of Mahabalipuram branch (original) for the period 9-5-83 to 31-12-89 (ME 34) (original)

Ex.M109 .... Suspense Register of Mahabalipuram branch (original) for the period 9-5-83 to 5-8-88 (ME 33) (original).

नई दिल्ली, 21 मार्च, 2001

का.आ. 782—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायलय, कानपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 7-3-2001 को प्राप्त हुआ था ।

[स. एल-12012/196/95- आई आर (बी-II)]

सी. गंगाधरन, अवर सचिव

New Delhi, the 21st March, 2001

S.O. 782.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Kanpur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 7-3-2001

[No. L-12012|196|95-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE SRI R. P. PANDEY PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COUR SARVODAYA NAGAR, KANPUR

Industrial Dispute No. 120 of 1996

In the matter of dispute between :—

State President, PNB Employees Union,
14/123 Kishanpur Rajpur Road.
Dehradun.

AND

Regional Managar,
Punjab National Bank,
R. O. Arya Nagar Chowk,
Jwalapur Hardwar.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its notification No. L-12012|196|95-I.R. (B-2), dated 26-11-96 has referred the following dispute for adjudication to this tribunal :—

Whether the action of the management of Punjab National Bank in imposing punishment of stoppage of two increments (without commulative effect) on Sri Ramphal

Singh, Daftri Branch Office BHEL, Ranipur, Hardwar is just and legal ? If not to what relief the workman is entitled ?

2. On 20-2-2001, when the case was taken up for hearing the authorised representative for the workman made an endorsement on the order sheet to the effect that the claim not pressed. In view of this endorsement of the authorised representative for the workman, this tribunal has no option but to hold that the concerned workman is not entitled to any relief in pursuance of the reference made to this tribunal for want of proof.

3. Accordingly it is held that the concerned workman is not entitled for any relief pursuance to the reference made to this Tribunal by the Central Government.

4. Reference is answered accordingly.

Dated 20-2-2001.

R. P. PANDEY, Presiding Officer

नई दिल्ली, 21 मार्च, 2001

का.आ. 783.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण कोटा, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-3-2001 को प्राप्त हुआ था।

[सं.एल.-12012/133/98-आई.आर.(बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 21st March, 2001

S.O. 783.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Kota as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda, and their workman, which was received by the Central Government on 17-3-2001.

[No. L-12012|133|98-IR(B-II)]

C. GANGADHARAN, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राज.

पीठासीन अधिकारी — श्री महेश चन्द्र भगवती, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ..न्या./केन्द्रीय/5/99

दिनांक स्थापित 23-3-99

प्रसंग : भारत सरकार श्रम मंत्रालय, नई दिल्ली के आदेशांक एल. 12012/133/98 आई आर (बी-II) दि. 23-2-99

निदेशक अन्तर्गत धारा 10(1) (घ)

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मध्य

लालचन्द्र जिंदल पुत्र श्री हनुमान प्रसाद निवासी होल पटवा मोहल्ला सवाईमाधोपुर। —प्रार्थी श्रमिक

एवं

रीजनल मैनेजर, बैंक आफ बड़ौदा, सवाईमाधोपुर। —अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि श्री एन के. तिवारी
श्री पुरूषोतम दाधी व

अप्रार्थी नियोजक की ओर से :— कोई उपस्थित नहीं। (एकपक्षीय कार्यवाही)

अधिनिर्णय दिनांक : 12-2-2001

: अधिनिर्णय :

भारत सरकार, श्रम मंत्रालय नई दिल्ली द्वारा अपनी उक्त आदेश दि. 23-2-99 के जरिये निम्न निदेश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तद्पश्चात "अधिनियम" से संबोधित किया जावेगा) की धारा 10(1) (घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :—

"Whether the action of officers of the Bank of Baroda through its Regional Manager, Swaimadhopur in terminating the services of Sh. Lalchand Jindal S|o Hanuman Prasad from 21-11-93, and not re-employing him in 1997, is legal and justified ? If not, what relief the said workman is entitled to and from what date ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना विधिवत रूप में जारी की गयी ।

3. प्रार्थी श्रमिक लालचन्द जिन्दल की ओर से क्लेम स्टेटमेंट प्रस्तुत कर संक्षेप में यह अभिकथित किया गया है कि उसे अप्रार्थी रीजनल मैनेजर, बैंक आफ बड़ौदा, रीजनल ओफिस बाल मंदिर कालोनी मानटाऊन, सवाईमाधोपुर (जिसे तदुपरान्त "अप्रार्थी नियोजक/बैंक" से सम्बोधित किया जावेगा) द्वारा दि. 9-1-84 से अस्थाई च. क्षे. कर्मचारी के पद पर दैमिक वेतन पर सेवा में नियोजित किया गया था परन्तु अप्रार्थी नियोजक ने उसे दि. 21-11-93 से अचानक बिना कोई कारण बताये व बिना किसी पूर्व सूचना के अवैध प्रकार से सेवा से हटा दिया । प्रार्थी ने आगे अभिकथित किया है कि इस प्रकार उसने अप्रार्थी के नियोजन में दि. 9-1-84 से 20-11-93 तक निरन्तर सेवारत रहते हुए 240 दिन से भी अधिक समय तक कार्य

कर लिया था, तद्परान्त भी अप्रार्थी नियोजक द्वारा उसे अधिनियम की धारा 25-एफ के प्रावधानान्तर्गत बिना एक माह का नोटिस अथवा नोटिस वेतन व छंटनी का मुआवजा दिये सेवा से पृथक कर दिया गया। आगे यह भी अभिकथित किया गया है कि अप्रार्थी नियोजक द्वारा केन्द्रीय औद्योगिक विवाद नियम, 1957 के नियम 77 की पालना में उसे सेवा से पृथक किये जाने से पूर्व वरिष्ठता सूची का प्रकाशन नहीं किया गया और न पहले आये बाद जाये सिद्धांत की पालना अधिनियम की धारा 25-जी के प्रावधानान्तर्गत की गयी। इसके अतिरिक्त अप्रार्थी नियोजक द्वारा प्रार्थी को सेवा से पृथक किये जाने के उपरान्त कई नये श्रमिक नियोजित कर लिये गये और प्रार्थी को पुनः नियोजन का कोई अवसर प्रदान नहीं किया गया जोकि अधिनियम की धारा 25-एच के प्रावधानों की स्पष्ट अवहेलना है। अन्त में यह प्रार्थना की गयी है कि प्रार्थी श्रमिक को अप्रार्थी नियोजक के यहां पिछले सम्पूर्ण वेतन व अन्य समस्त लाभों सहित पुनः सेवा में बहाल किये जाने का आदेश पारित किया जावे।

4. अप्रार्थी नियोजक को तारीख पेशी 29-6-99 के रजि. नोटिस की तामील की गयी थी जिसकी कि ए.डी. रसीद पत्रावली पर उपलब्ध है परन्तु उनकी ओर से इस तिथि व उसके बाद दि. 18-5-2000 को न्यायालय में कोई उपस्थित नहीं होने से उनके विरूद्ध कार्यवाही एकतरफा किये जाने के आदेश पारित किये गये।

5. साक्ष्य एकतरफा में प्रार्थी श्रमिक लालचन्द जिंदल की ओर से अपना शपथ-पत्र प्रस्तुत किया गया व प्रलेखीय साक्ष्य में सेवा सम्बन्धी कुछ प्रलेख प्रस्तुत किये गये जिनका यथासमय उल्लेख किया जायेगा।

6. बहस एकतरफा सुनी गयी व पत्रावली तथा प्रस्तुत अभिलेख का ध्यानपूर्वक परिकोलन किया गया।

7. प्रार्थी के विद्वान प्रतिनिधि श्री एन. के. तिवारी का तर्क है कि प्रार्थी लालचन्द जिंदल ने दि. 9/1/84 से 20/11/93 तक निरन्तर कार्य किया है। यद्यपि अप्रार्थी नोटिस की तामील उपरान्त भी न्यायालय में उपस्थित नहीं हुआ है किन्तु वह सहायक श्रमायुक्त केन्द्रीय एवं समझौता अधिकारी कोटा के समक्ष अवश्य उपस्थित हुआ है और प्रार्थी के विवाद का समझौता अधिकारी के समक्ष दि. 21/2/98 को जवाब भी प्रस्तुत किया है : यद्यपि प्रार्थी ने स्टेटमैन्ट आफ क्लेम अथवा शपथपत्र में इस तथ्य का उल्लेख नहीं किया है कि उसने किसी कलेण्डर वर्ष में 240 या उससे अधिक दिन कार्य किया है, किन्तु जो विवाद उसने समझौता अधिकारी के समक्ष प्रस्तुत किया है उसमें सन 1984 से 1993 तक किये गये कार्य का विस्तृत ब्यौरा प्रस्तुत करते हुए कथन किया है कि प्रार्थी ने अप्रार्थी के यहां वर्ष 1985 में 174 दिन, वर्ष 1986 में 119 दिन व वर्ष 1987 में 80 दिन बैंक मानटाउन सवाई, माधोपुर में कार्य किया है जहां उसकी प्रथम नियुक्ति हुई थी। इसके आगे प्रार्थी ने यह भी कथन किया है कि अप्रार्थी ने उसे वर्ष 92 में मानटाउन खिरनी शाखा पर पुनः लगाया था जहां उसने 157 दिन कार्य किया था। वर्ष 1993 में उसने खिरनी मलारना बैंक शाखा पर 254 दिन कार्य किया है। इस प्रकार उसने वर्ष 1984 से 1993 के मध्य कुल 910 दिन अप्रार्थी के यहां कार्य किया है। अप्रार्थी ने सहायक श्रम युक्त केन्द्रीय कोटा के समय यह स्वीकार किया है कि उसने लालचन्द जिंदल को वर्ष 84 से वर्ष 93 के बाद विभिन्न शाखाओं में व समय-समय पर कार्य की आवश्यकता पड़ने पर स्थायी च.श्रे. कर्मचारी की अनुपस्थिति में दैनिक वेतन मजदूरी पर नियुक्त किया था तथा उसकी मजदूरी का भुगतान वाऊचर द्वारा किया गया था। अप्रार्थी ने यह भी स्वीकार किया है कि वर्ष 1991-92 के दौरान एक विज्ञप्ति अखबार माध्यम से जारी की गयी थी तथा उन व्यक्तियों से आवेदन मांगे गये थे जिन्होंने 1-1-82 से 31/12/90 तक की अवधि के दौरान 90 दिन या उससे अधिक दिनों तक अस्थायी रूप से बैंक में कार्य किया था ताकि भविष्य में उनकी सेवा में जारी रखने हेतु विचार किया जा सके, किन्तु प्रार्थी लालचन्द जिंदल का आवेदन निर्धारित समयावधि में प्राप्त नहीं हुआ था। अप्रार्थी बैंक द्वारा भारत सरकार से प्राप्त विभिन्न निदेशानुसार केवल नियोजन कार्यालय द्वारा भेजे गये पांच व्यक्तियों की सूची में से ही अभ्यर्थियों के साक्षात्कार लेकर चतुर्थ श्रेणी कर्मचारी का चयन किया गया था इसी कारण लालचन्द जिंदल को स्थायी नियुक्ति नहीं दी जा सकी। श्री जिंदल ने किसी भी एक कलेण्डर वर्ष में भी 240 दिन से अधिक कार्य नहीं किया है, अतः वह अधिनियम के अन्तर्गत किसी भी लाभ को प्राप्त करने का अधिकारी नहीं है। दोनों पक्षों के प्रार्थनापत्र एवं जवाब के आधार पर सहायक श्रमायुक्त (केन्द्रीय) कोटा ने अपने असफल वार्ता प्रतिवेदन को सचिव, भारत सरकार, श्रम विभाग मंत्रालय को प्रेरित किया जिसका भी मैंने अवलोकन किया है।

8. अप्रार्थी न्याय विवरण के समक्ष तो उपस्थित ही नहीं हुआ है और उसने प्रार्थी के स्टेटमैन्ट आफ क्लेम का कोई उत्तर नहीं दिया, किन्तु सहायक श्रमायुक्त (केन्द्रीय) कोटा के समक्ष उसने उपस्थित होकर प्रार्थी के विवाद को आंशिक रूप से स्वीकार किया है, किन्तु एक कलेण्डर वर्ष में 240 या 240 दिन से अधिक कार्य के सम्बन्ध में केवल मात्र यह कथन किया है कि प्रार्थी जिंदल ने किसी भी एक कलेण्डर वर्ष में 240 या इससे अधिक दिन तक कार्य नहीं किया है। अप्रार्थी का यह जवाब अपूर्ण है। अब प्रार्थी ने अपने प्रार्थनापत्र में स्पष्ट रूप से यह उल्लेख किया है कि उसने वर्ष 93 में खिरनी मलारना बैंक शाखा में 254 दिन कार्य किया था। तो अप्रार्थी को या तो उसके इस कथन को स्वीकार करना चाहिए था और या इसका खण्डन करना चाहिए, था, किन्तु अप्रार्थी ने सहायक श्रमायुक्त (केन्द्रीय) कोटा के समक्ष दि. 21/2/98 को प्रस्तुत जवाब में प्रार्थी के इस तथ्य का खंडन नहीं किया है। अप्रार्थी ने अपने जवाब में यह कहीं नहीं कहा है कि प्रार्थी ने वर्ष 93 में खिरनी मलारना बैंक शाखा पर 254 दिन कार्य नहीं किया था। अप्रार्थी

ने यह भी स्वीकार किया है कि उसने अधिनियम, 1947 के अन्तर्गत किसी प्रावधान की अनुपालना नहीं की है। चूंकि प्रार्थी का यह कथन कि उसने खिरनी मलारना बैंक शाखा पर 254 दिन कार्य किया है और यह कथन अखण्डित रहा है, अतः इस स्थिति में अप्रार्थी द्वारा अधिनियम की धारा 25-एफ एवं 25-जी के प्रावधान की अनुपालना करना पूर्णरूपेण अपेक्षित है जो अप्रार्थी ने नहीं की है।

9. न्यायाधिकरण में भी अप्रार्थी ने उपस्थित होकर प्रार्थी द्वारा स्टेटमेन्ट तथा शपथ-पत्र में वर्णित तथ्यों का खंडन नहीं किया है, अतः प्रार्थी की शपथ-पत्र पर दी गयी साक्ष्य अखण्डित रहने के कारण भारतीय साक्ष्य अधिनियम के प्रावधानान्तर्गत साक्ष्य में ग्रहण किये जाने योग्य है और अभिलेख पर प्रार्थी की दी गयी साक्ष्य पर विश्वास न किये जाने का कोई आधार नहीं है। इसके विपरीत बैंक ऑफ बड़ौदा के शाखा प्रबन्धक ने दि. 5-11-93 के पत्र द्वारा यह स्वीकार किया है कि प्रार्थी लालचन्द्र जिंदल ने दि. 1-2-93 से 2-11-93 के दौरान अस्थाई तौर पर दैनिक वेतन मजदूरी के आधार पर कुल 227 दिन स्थाई चतुर्थ श्रेणी कर्मचारी की नियुक्ति के अभाव में (अवकाश पर रहने) पर प्रतिनियुक्ति पर जाने पर कार्य किया है। अवकाश की अवधि जोड़ने पर यह अवधि 240 दिन से अधिक हो जाती है। अभिलेख पर ग्राह्य साक्ष्य से प्रार्थी द्वारा वर्ष 1993 में खिरनी मलारना बैंक शाखा पर 254 दिन कार्य करना साबित है। अप्रार्थी ने अधिनियम की धारा 25-एफ के प्रावधान की अनुपालना में प्रार्थी श्रमिक को सेवा से पृथक करने से पूर्व ना तो कोई एक माह का नोटिस अथवा नोटिस वेतन दिया और ना ही छंटनी के मुआवजे का भुगतान किया है। अप्रार्थी ने पहले आय बाद जाय सिद्धान्त की भी अनुपालना नहीं की है। इस प्रकार उसने धारा 25-जी के प्रावधान की भी अवहेलना की है। अप्रार्थी ने प्रार्थी को सेवा से निकाले जाने के पश्चात् कई नए श्रमिकों को भी सेवा में नियोजित किया है। इस प्रकार अप्रार्थी द्वारा धारा 25-एच के प्रावधान का भी उल्लंघन किया जाना पाया जाता है। इस प्रकार प्रार्थी श्रमिक को अप्रार्थी नियोजक द्वारा अधिनियम की अपेक्षित धाराओं की पालना किये बिना सेवा से पृथक किया गया है जोकि अनुचित एवं अवैध है, फलस्वरूप प्रार्थी, अप्रार्थी के यहां अपनी सेवा की निरन्तरता सहित पुनः सेवा में आने का अधिकारी होना पाया जाता है।

10. अब जहां तक प्रार्थी श्रमिक के पिछले वेतन का प्रश्न है, प्रार्थी श्रमिक ने अपने क्लेम स्टेटमेन्ट में सेवा से पृथक अवधि में बेरोजगार रहने सम्बन्धी किसी तथ्य का उल्लेख नहीं किया है और केवल अपने शपथ-पत्र में ही यह कथन किया है कि वह नौकरी से निकालने के बाद से आज दिन तक बेरोजगार रहा है। परन्तु प्रार्थी श्रमिक ने अपने स्टेटमेन्ट अथवा शपथ-पत्र में यह लेश मात्र भी कथन नहीं किया है कि व उसने सेवा पृथक अवधि में कोई काम ढूंढने की कोशिश की हो और तब उसको कहीं कोई काम नहीं मिला हो। प्रस्तुत तथ्यों के परिप्रेक्ष्य में यह माने जाने का पर्याप्त कारण है कि उसने सेवा पृथक अवधि में कहीं न कहीं कोई रोजगार करके अवश्य कोई लाभार्जन किया होगा। अतः समस्त परिस्थितियों में प्रार्थी श्रमिक को पिछले वेतन के रूप में 50% वेतन दिलाया जाना उपयुक्त समझा जाता है।

परिणामतः भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा सम्प्रेषित निर्देश/विवाद को अधिनिर्णित करते हुए इस प्रकार उत्तरित किया जाता है कि प्रार्थी श्रमिक लाल चन्द्र जिन्दल को अप्रार्थी नियोजक रीजनल मैनेजर, बैंक बैंक ऑफ बड़ौदा, सवाई माधोपुर द्वारा दि. 21-11-93 से सेवा से पृथक किया जाना अनुचित एवं अवैध है, फलस्वरूप प्रकरण की समस्त परिस्थितियों में प्रार्थी श्रमिक पिछले 50% वेतन व सेवा की निरन्तरता सहित पुनः सेवा में लिए जाने का अधिकारी घोषित किया जाता है।

महेश चन्द्र भगवती, न्यायाधीश

नई दिल्ली, 21 मार्च, 2001

का.आ. 784.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-3-2001 को प्राप्त हुआ था।

[स.एल.-12011/47/93-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 21st March, 2001

S.O. 784.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal/Labour Court, Calcutta as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workman, which was received by the Central Government on 13-3-2001.

[No. L-12011/47/93-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 14 of 1994

PARTIES :

Employers in relation to the management of Indian Overseas Bank.

AND

Their Workman.

PRESENT :

Mr. Justice Bharat Prasad Sharma.—Presiding Officer.

APPEARANCE :

On behalf of Management.—Mr. S. M. Basu, Advocate.

On behalf of Workmen.—Mr. K. H. Dasan, Advocate.

STATE : West Bengal. INDUSTRY : Banking.

AWARD

By Order No L-12011/47/93-IR(B-II) dated 8th April, 1994 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to the Tribunal for adjudication :

"Whether the demand of All Bank Canteen Employees' Union, Calcutta for regularisation of the services of 44 workmen(as per list attached) employed in the canteens of different offices of Indian Overseas Bank at Calcutta and suburb is justified? If so, what relief are the workmen concerned entitled to?"

Name of Canteen Employees of Indian Overseas Bank, Calcutta .—

1.	Asoke Kumar Ghosh	Zonal
2.	Mahesh Patra	,,
3.	Monomohan Patra	,,
4.	Tapan Pal	Regional
5.	Basu Halder	,,
6.	Tapan Bhownick	,,
7.	Pandab Das	,,
8.	Tapan Dutta	Ind. Exc.
9.	Gopi Paloi	,,
10.	Kamal Basu	,,
11.	Gobindra Saha	,,
12.	Amar Saha	,,
13.	Amal Das	Stand Rd.
14.	Chandan Bag	,,
15.	Lal Chand Sardar	,,
16.	Purna Patra	Wood St.
17.	Jogesh Raul	,,
18.	R. K. Raul	,,
19.	B. K. Raul	,,
20.	R. M. Bharathi	Free School St.
21.	D. C. Dutta	,,
22.	Manik Roy	CCO
23.	Uttam Sasmal	Baranagar
24.	B. Mondal	Bally
25.	L. Maity	Posta
26.	S. Basu	Salt Lake
27.	A. Manna	,,
28.	J. N. Ghosh	Jm Ave.
29	S. Roy	Chow.
30.	Pintu Bag	,,
31.	A. Chakraborty	Kalighat
32.	S. N. Bera	New Alipure
33.	G. Kola	Kadamtala
34.	A. Halder	DH. Rd.
35.	Arup Das	Howrah
36.	T. K. Chandra	Bally Park.
37.	Tapan Saha	Sona Patto
38.	B. Addak	,,
39.	N. K. Halder	Dharmatala
40.	Kanai Sarder	Goal Park
41.	Gour Mondal	LD. Market
42.	Anjan Sarkar	Shyambazar
43.	Ajait Manna	,,
44.	S. Jana	Dum Dum

2. The genesis of the case arising out of this industrial dispute is that the employer in this case happens to be one of the nationalised Banks having several branches in Calcutta and in its suburb. As a measure of welfare of the staffs of the Bank, canteens were set up by the Bank to meet the demand of the employees for supply of subsidised food. The Bank has 37 branches at Calcutta and suburb and there are 25 branches where canteen facilities are available and the canteen employees are 44 in number. The canteenboys were employed since long. The canteens were established as per the provisions contained in an Award known as Sastri Award. In the said Sastri Award it is provided that providing the amenties like canteen, club house, payment of taxes etc. shall be the responsibility of the employer Bank. It is stated on behalf of the union that several canteens are all set-up in the Bank's premises and used their furnitures, fixers, water, electricity, fuel and gas and utensils etc. as supplied by the Bank. In this context the union made a demand for regularisation of the canteenboys as subordinate staffs of the Indian Overseas Bank. The demand was made in the year 1990 and it was persistently persued, but the management did not agree to it. Therefore, the dispute was raised and the matter was taken up before the Labour Commissioner where the conciliation proceeding was held, but it ended in failure. Accordingly, on the report of the conciliation officer, the Government of India being the competent authority, has made the reference in question.

3. So far as the management of the Bank is concerned, it has been stated on its behalf that the union espousing the cause of the persons working in the canteens does not represent the employees of the Indian Overseas Bank and therefore the reference is incompetent and invalid. It is also further stated that the dispute in question cannot be treated as an industrial dispute in terms of Section 2(k) of the Industrial Disputes Act, 1947 as the persons working in the canteens were never engaged by the management of the Bank. It is further stated that there is no statutory obligation to provide or run canteens for the employees and the Bank is not under any obligation under any statute or award or settlement to provide or run any canteen for its employees. Further, it is stated that the terms and conditions of service of its clerical and subordinate staffs are contained in two awards known as Sastri Award and

Desai Award and in a bipartite settlement dated 19th October, 1966 and several other bipartite settlements, which are all applicable to the whole banking industry. It is stated that none of the awards or settlements contained any provision requiring the Bank to provide or run any canteen. In this background it is stated that the Bank does not run any canteen, nor employ any canteen worker. However, the Bank provides certain sum of money per staff member as subsidy at branches where the total staff strength is above 25 as welfare measure. It is also further stated that disbursement of subsidy per staff member is also not on the basis of any settlement, but on account of welfare measure and without recourse to the management. Further, it is stated that arrangement of supply of beverages and refreshment are not being made by the Bank and it is left to the staff members themselves to make their own arrangement suiting to their convenience and the management does not interfere in any manner in the administration of the canteens. It is denied that the management has any control over the number of persons engaged for supplying the refreshment or it does restrict the engagement of these persons by the suppliers. It is also stated that the Bank does not recognise employment of any person for this purpose. So, it is stated that it is absolutely the discretion of the supplier to determine the number of persons as also their nature of job and therefore, it is stated that there is no relationship of employer and employee between the management of Indian Overseas Bank and the suppliers of canteens and their workers. It has been stated that the persons working in the canteens were never the employees of the Indian Overseas Bank and the Bank has no liability.

4. Both the parties adduced evidence, oral as well as documentary in support of their respective claims. So far as the oral evidence is concerned, one witness each has been examined by both the parties. WW-1 is one Asoke Ghosh, who claimed that he had joined canteen at 36, Sekhespear Sarani Branch of Indian Overseas Bank in 1988 as Manager and he is still working there. However, subsequently, that branch has changed into Regional Office of the Bank. He further stated that there are about 30 branches of the Bank at Calcutta and Howrah and in 25 of the branches there is provision of canteen. He further stated that in these 25 branches the total number of workers were 42. Originally it was 44, but according to him 2 have left the job and the rest 42 have interest in the matter. It is further stated by his witness that the canteens in the branches were started as per Sastri Award and not according to any statute. The relevant provision of the Sastri Award has been marked Ext. W-1. This Ext. W-1 in paragraph 609 of the Award runs as follows :—

> "609. The next important question relates to the scope of this option i.e., whether it should be only with reference to what is called the totality of all pre-existing terms and the totality of all the terms of our award. The workmen demand that distinctive groups of benefits should be recognized and the choice should be given with reference to each of such groups. The banks oppose the splitting up of the totality of the terms of service. Several distinctive groups in relation to the monetary benefits, present and future and service conditions and other amenities do exist. In our judgement such distinctive groups should be sorted out and a choice should be given with reference to the pre-existing terms and the terms of our award in relation to some at least of the groups but taking each of them as one unit. Even the banks counsel had to admit that in evaluating the benefits of pre-existing terms and the terms of our award there are certain service conditions which cannot be valued in terms of money. We have carefully considered the matter of grouping and we are of the opinion that the grouping should be on the following lines :
>
> (1) Pay, dearness allowance, special allowance, house rent allowance, and officiating allowance.
>
> (2) Provident Fund.
>
> (3) Gratuity and Pension.
>
> (4) Bonus.
>
> (5) Leave Rules.
>
> (6) Working hours and overtime.
>
> (7) Conditions of service other than working hours and overtime, and
>
> (8) Amenities e.g. canteen, club-house, payment of taxes etc.
>
> We are of the opinion that no option should be given in respect of the following groups :—
>
> (1) Leave Rules.
>
> (2) Working hours and overtime.
>
> (3) Conditions of service other than working hours and overtime, and
>
> (4) Amenities, except as otherwise provided for in our award.
>
> We may in particular make it clear that there will be no choice in respect of the following items viz. "other allowances", and "medical relief" except as otherwise provided for in our award. In these matters also the awarded terms will apply to all the workmen."

It has been further stated by this witness that the aforesaid canteens are run within the premises of the Bank in all the branches of the Bank where the canteen exists. The furniture is also provided by the Bank. Electricity, kerosine for coocking or use of electric energy is also provided by the Bank. However, he stated that as Canteen Manager his duty is from 9.30 A.M. to 5 P.M. and all the canteen workers follow the same schedule of duty period. According to him he gets Rs. 750 per month and the salaries of other employees in different branches varry from Rs. 300/- to Rs. 500/-. He has also stated that the union espousing the cause

of the workers is affiliated to All Bank Canteen Employees' Union. He has also stated that he happens to be the President of the Indian Overseas Bank Staff Canteen Employees Union in Calcutta and therefore he is acquainted with the facts of the case. He also states that he happens to be executive committee member of the All Bank Canteen Employees Union. However, in reply to the question put by the Tribunal, the witness stated that every month he receives his salary from the canteen committee and not from the Bank. He also further admitted that the canteen committee decides the pay of the Centeen Manager and it varies from branch to branch. He also further stated that he did not receive any letter of appointment when he was engaged as Manager, rather he was oraly asked to join the work. He further stated that in the canteen committee there happens to be five members who are all employees of the bank and the secretary of the canteen committee is appointed. He further stated that he was informed by a friend of his working in the bank that there was a vacancy for the manager of the canteen in the bank and he was also asked to meet the secretary. He also further stated that the canteen committee is selected by the staff members who use the canteen. Further he has stated that the daily expenses of the canteen are made by him and the money is paid to him by the canteen committee, but he does not know as to where from the committee gets money. He also further stated that the bank pays money to the canteen committee calculating at the rate of Rs. 20/- per head and this amount is spent by the canteen committee for running the canteen. According to him all the persons interested and involved in this case have been working in the canteens since the year 1970 and though they have been working since long, there has been no improvement in their condition and none of the workmen has worked for less than 6 years. He has also further stated that out of 44 persons named in the schedule to the reference, 15 persons have been given temporary appointment as Sweapers. Out of these 15 persons, 5 have been given letters of appointment and the rest 10 are working on oral order. He also gave out the names of the persons who were given appointment letters and he also gave out the names of the persons who were working on verbal orders. In his cross-examination, the witness has stated that whenever a person or two comes from outside to take his food in the canteen, he has to pay in cash. But so far as the employees of the Bank are concerned, their accounts are maintained and they pay at the end of the month. He also further stated that the menu for each day is decided by the secretary after consulting him and the price of each item sold in the canteen is also decided by the secretary. The price so decided by the secretary is in consultation with the members of the welfare committee. He has also stated that there is no document to show as to for how many days he has to work and what kind of leave and what period of leave he is entitled to because there is no appointment letter issued to him. But, there is a definite rule made by the canteen secretary in this regard and according to him he is entitled to casual leave, sick leave and privilage leave etc. For this purpose he has to ask the secretary to take a note and adjust the leave in his account. He has also stated that this leave is granted orally and he is orally informed.

5. On the other hand, MW-1, Shri Chaitanya Kumar Sarkar has been examined on behalf of the management. He stated that he happens to be the Deputy Chief Officer, Administration in the Regional Office of the Indian Overseas Bank and he knows the facts of this case. According to him the canteen employees are not under the administrative control of the Bank and the management of Indian Overseas Bank has nothing to do with the appointment of the canteen employees and no such appointment was ever made by the Bank. However, he has stated that the canteen facility is no part of the service condition of the bank employees and the canteen boys are not entitled to regularisation as prayed by them. He has also stated that the Bank is not entitled to grant leave and other facilities to the canteen boys and the canteen committee pays wages to these employees. He, however, admits that the members of the clerical staff of the bank happens to be the members of the canteen committee and some subsidy is being paid by the bank to the canteen committee. In his cross-examination, he expressed his ignorance whether anyone from amongst the canteen boys was absorbed as regular employee of the Bank. He, however, has admitted that five appointment orders marked Ext. W-3 series were issued for appointment of temporary sweepers and they are working as casual sweeprs. He has further stated that he has no concern with the canteen boys named in the reference and he also does not know the names of those two persons who have left service. He also does not know whether at present only 22 persons have got interest in the matter. In his cross-examination, he has further stated that his knowledge of the case is derived from the record only. He further stated that Indian Overseas Bank was nationalised in July, 1969 and that staff of the Bank enjoy canteen facilities and members of the staff formed the canteen committee. He has also admitted that the Bank provides subsidy to the canteen committee and the rate of subsidy at present is Rs. 25/- per member, which was previously Rs. 20/- per member. According to him canteen facilities was earlier provided to the branches having a staff strength of 25 or above and at present it is for 20 and above. He he further amitted that canteens are situated in the bank premises and electricity, utensils, furnitures etc. are provided by the Bank. He, however, says that power or fuel for cooking is not provided by the bank and it is provided by the canteen committee. He has denied a suggestion that the management of the bank has all perversive control over the canteens and that canteen boys are employees of the bank.

6. So far as the management is concerned, it has been contended that neither the canteens are statutory creations, nor the canteens are run directly by the management of the bank. It is also stated that the employees of the canteens are never appointed by the management, nor the management has direct control and supervision over these workers. Therefore, it has been contended that the claim of the

workman regarding their absorption or regularisation in the regular cadre is unreasonable and improper. It has been contended that so far as the criteria for eligibility of the canteen employees for their absorption or regularisation in the regular cadre of the staff in the bank is concerned, it has been decided in several cases before the higher courts, including the Hon'ble Apex Court that the management is not obliged to treat all such employees as their employees and absorb them in regular cadre because so far as the appointment of the regular staff are concerned, the same are guided by some rules, but the appointment of such casual staff as canteen boys is not made according to any rule. It has also been contended that from the materials in the evidence it appears that the canteens are neither creations of any statute or regulation or any award or agreement and the employeees of the canteens have also not been appointed by the Bank. The Bank has also no direct control and supervision over these workers and therefore in law the relationship of employer and employees does not exist be ween the bank and these workman. It has been pointed out that so far as the Sastri Award on which the union has place reliance is concerned, no where it is mentioned in the Award in the relevant paragraph referred to above that canteen shall be establishment by the management of the bank. Rather, it has been stated that the staff shall be provided with canteen facility. Therefore, it is contended that the creation of the canteens is neither statutory, nor regulatory. It is also pointed out that from the evidence of the witness of the union itself it becomes clear that the canteens are run by committees, though consisting of the members of the staff of the bank and the management has no direct control over the same because the entire working of the canteens is conducted and supervised by the canteen committees and the management has no concern with the same. It is submitted that the bank has only started giving subsidy to the canteen committees to run the canteen and has also allowed space and other benefits to the canteen committee for the shake of giving facility to its employees, but neither the service of the canteen employees is controlled by the bank, nor the bank has direct supervision over them. In this view of the matter it has been submitted that the claim of the workmen invilved in this reference is not justified and not fit to be accepted.

7. In support of his contentions learned Advocate appearing for the management has cited some decisions. The first decision so cited is the case of State Bank of India & Ors. v. State Bank of India Canteen Employees Union & Ors., reported in 2000-I-LLJ-1441. In this case by their Lordships of the Hon'ble Supreme Court held that the State Bank had no obligation to run canteens and therefore was not obliged to absorbe the canteen employees who were employed in such branches of the bank where the canteens were not statutory. It was in the context of the fact that the State Bank had taken over the canteens under their direct control where the minimum number of employees were 100 and other class of canteens were not taken under the direct control of the bank. Therefore it has been submitted on this principle that the case of the workmen in this case also is similar to those of the canteen employees of the State Bank of India who were working in non-statutory canteens. In this connection it is significant to note that earlier against a decision of the Hon'ble High Court of Calcutta an appeal was filed before the Hon'ble Supreme Court and when it was pointed out that similar matters were still pending before this Tribunal, their Lordships of the Hon'ble Supreme Court ordered this Tribnual to pass Award in one of the reference and if the parties felt dissatisfied with the said Award they could approach the Hon'ble Supreme Court directly. However, there was a bipartite settlement and the union agreed that the bank shall absorb only those employees who were employed in the branches having more than 100 employees. After the Award was made by this Tribunal, the matter again went before the Hon'ble Supreme Court and there it was held that those canteen employees who were employed by the local implementation committee as per the welfare scheme will not be treated as employees of the Bank as the Bank was not having any statutory or contractual obligation or obligation arising out of an award to run such canteen. But, the real point which became the deciding factor in that case was that the union itself had agreed to enter into an agreement with the management and had accepted this position. Accordingly, the matter was decided. Therefore, the case of the State Bank of India has no proper application in the present context.

8. Another decision in this connection is the case of Indian Petrochemicals Corporation Ltd. & Anr. v. Shramik Sena and Ors., 1999(4) L.L.N. 49. In this case the workmen engaged in the canteen of the Corporation had prayed for regularisation which was allowed by the Industrial Tribunal. The matter was taken up befaore the Hon'ble High Court and thereafter it ultimately went to the Hon'ble Apex Court. In this case their Lordships discussed the matter in details and it was found that under the provisions of sections 2(e) and 46 of the Factories Act, 1948 provisions for canteens was made statutory and accordingly canteens were established and from the very inception of the canteens some workmen were engaged. They continued to work for a longer period and when they started claiming their regularisation, the dispute arose. While the matter was pending before the Tribunal the workmen made a prayer to the Tribunal to issue direction so that they are not disturbed and dislodged from their service and accordingly such a direction was issued. The Hon'ble High Court while deciding the matter held that since the workmen were in continued service for a pretty long time they would be regularised, but some conditions were also laid down. The matter ultimately went before the Hon'ble Supreme Court and their Lordships decided the matter in favour of the workman and upheld their claim of regularisation inspite of the fact that there were certain technical objections raised on behalf of the management in a counter appeal. It was held by their Lordships that "in this appeal, the workmen have questioned the conditions that have been imposed by the High Court while directing regularisation of the workman. They contend that once the Court comes to the conclusion that the workmen are in fact the employees of the management, there is no occassion to impose these conditions. We are unable to agree with this argument. It should be borne in mind that the initial appointments of these workmen are not in accordance with the rules governing the appointments of the established policy of

recruitment of the management. The said recruitments could also be in contravention of the various statutory orders including the reservation policy. Further the respondent is an instrumentality of the State and has an obligation to commit to the requirements of Arts. 14 and 16 of the Constitution. Inspite of the same the services of the workmen are being regularised by the Court not as a matter of right of the workmen arising under any statute but with a view to eradicate unfair labour practices and in equity to undo social injustice and as a measure of labour welfare. Therefore, it is necessary that in this process suitable guidelines or conditions be laid down at the time of Courts issuing directions to regularise the services of the workmen so concerned depending upon the fact of each case. This Court has consistently followed this practice in the earlier cases of regularisation and we do not find any reason to differ from the same. For the aforesaid reasons, this appeal also and the same is dismissed but with costs. "Further, their Lordships held' Though the canteen in the appellant's establishment is being managed by engaging a contractor, it is also an admitted fact that the canteen has been in existence from inception of the establishment. It is also an admitted fact that all the employees who were initially employed and those inducted from time to time in the canteen have continued to work in the said canteen uninterruptedly. The employer contends that this continuity of employment of the employees, in spite of there being change of contractors, was due to an order made by the Industrial Court, Thane, on 10 November 1994, wherein the Industrial Court held that these workmen are entitled to continuity of service in the same canteen irrespective of the change in the contractor. Consequently a direction was issued to the management herein to incorporate clauses in the contract that may be entered into with any outside contractor to ensure the continuity of employment of these workmen. The management, therefore, contends that the continuous employment of these workmen is not voluntary. A perusal of the said order of the Industrail Court shows that these workmen had contended before the said Court that the management was indulging in an unfair labour practice and in fact they were employed by the Company. They specifically contended therein that they are entitled to con inue in the employment of the Company irrespective of the change in the contractor. The Industrial Court accepted their contention as against the plea put forth by the management herein. The employer did not think it appropriate to challenge this decision of the Industrial Court which has become final. This clearly suggests that the management accepted as a matter of fact the respondent-workmen are permanent employees of the management's canteen. This is a very significant fact to show the true nature of respondents employment. That apart, a perusal of the affidavits filed in this Court and the contract entered into between the management and the contractor clearly establishes :

(a) The canteen has been there since the inception of the appellant's factory

(b) The workmen have been employed for long years and despite change of contractors the workers have continued to be employed in the canteen.

(c) The premises, furniture, fixture, fuel, electricity, utensils, etc. have been provided by the appellant.

(d) The wages of the canteen workers have to be reimbursed by the appellant.

(e) The supervision and control on the canteen is exercised by the appellant through its authorised officer, as can be seen from the various clauses of the contract between the appellant and the contractor.

(f) The contractor is nothing but an agent of a Manager of the appellant, who works completely under the supervision, control and directions of the appellant.

(g) The workmen have the protection of continuous employment in the establishment.

Considering these factors cumulatively, in addition to the fact that the canteen in the establishment of the management is a statutory canteen. We are of the opinion that in the instant case, the respondent-workmen are in fact the workmen of the appellant-management. "The contractor in the present case was engaged only for the purpose of record." Accordingly, the regularisation of the canteen workers was upheld by their Lordships.

9. In this connection it is contended on behalf of the management that since in the case above, the canteen was statutory canteen under the Factories Act and the service of the canteen employees were continued for a pretty long time, their Lordships of the Hon'ble Supreme Court allowed their regularisation. But, this is not the fact in the present reference. Here the canteens are managed by the canteen committees and neither they have been appointed by the Bank, nor their services are controlled and supervised by the Bank and therefore the canteen employees are not entitled to regularisation.

10. Another case cited on behalf of the management is the case of employers in relation to the management of Reserve Bank of India v. their workmen, AIR 1996 SC 1241. In this case their Lordships of the Hon'ble Supreme Court held that the relationship of employer and employee did not exist between the Bank and the workman and therefore the workmen were not the employees of the Reserve Bank. It was held by their Lordships that when R.B.I. was not legally obliged to run canteens, nor has effective control to supervise the work done by canteen employees, they were not entitled to regularisation. Learned Advocate for the management has accordingly submitted that the following the decision in this case in a recent judgement of the Hon'ble Apex Court the claim of the workman in the present reference can not be allowed because in this case also there is evidence to show that the canteens are not statutory, nor the employees have been employed by the Bank directly, rather they have been engaged by the canteen committees and the services of these workmen are also not directly controlled and supervised by the Bank. Therefore, they are not entitled to their claim.

11. On the other hand, some decisions have been cited on behalf of the workmen. Earlier a decision was cited which was a judgement of the Hon'ble

Madras High Court in the case of Indian Overseas Staff Canteen Workers Union v. Indian Overseas Bank & Anr. In a similar situation where the employees of the canteen of the branches of the present Bank had claimed their regularisation and the Hon'ble High Court had allowed their claim upholding the Award of the Tribunal. It is therefore contended that in view of the fact that in the same Bank when the claim of other employees in a different region had been allowed, there does not appear to be any justification in refusing the claim of the present workman. However, when this decision was cited an objection was raised on behalf of the management that the said judgement of the Hon'ble High Court of Madras was challenged before the Hon'ble Supreme Court and the matter was not finally decided and therefore it cannot be made basis for deciding the present reference. But, interestingly, the matter has been finally decided by their Lordships of the Hon'ble Supreme Court in the case of Indian Overseas Bank v. I.O.B. Staff Canteen Workers Union & Anr., JT 2000(4) SC 503. Their Lordships after discussing the various aspects of the case have ultimately accepted the contention of the workman and held as follows :—

"20. The factual findings recorded by the Tribunal and the Division Bench as also the materials relied upon therefor, have been already act out in detail, supra and it is unnecessary to refer to them in greater detail once over again. The canteen in question was being run from 1-1-73 and even before that indisputably, the Bank itself had arranged for running of the same through a contractor and similar arrangement to run through a contractor was once again made by the Bank on its closure on 26-4-90, though after a period of some break from 21-10-92. Besides this, the nature and extent of assistance, financial and otherwise in kind, provided which have been enumerated in detail, would go to establish inevitably that the Bank has unmistakably and for reasons obvious always undertaken the obligation to provide the canteen services, though there may not be any statutory obligation and it will be too late to contend that the provision of canteen had not become a part of the service conditions of the employees. The materials placed on record also highlight the position that the Bank was always conscious of the fact that the provision and availing of canteen services by the staff are not only essential but would help to contribute for the efficiency of service by employees of the Bank. That is, was restricted to the employees only, that the subsidy rate per employee was being also provided, and the working hours and days of the canteen located in the very Bank buildings were strictly those of the Bnak and the further fact that no part of the capital required to run the same was contributed by anybody self, either the Promoters or the staff using the canteen are factors which strengthen the claim of the workers. It was also on evidence that the canteen workers were enlisted under a welfare fund scheme of the Bank besides making them eligible for periodical medical check up by the doctors of the Bank and admitting them to the benefits of the Provident Fund Scheme. The cumulative effect of all such and other fact noticed and considered in detail provided sufficient basis for recording its findings by Tribunal as well as the Division Bench of the High Court ultimately to sustain the claim of the workers, in this case.

21. The learned Single Judge seems to have not only overlooked certain relevant material but by adopting a negative approach had belittled the relevance and importance of several vital and important factual aspects brought on record. If on the facts proved, the findings recorded by the Tribunal are justified and could not be considered to be based upon no evidence, there is no justification for the High Court in exercising writ jurisdiction to interfere with the same. The promoters of the canteen being permanent employees in the service of the Bank, permitted to run the canteen, by merely being in control of the day-to-day affairs of the canteen, the Bank cannot absolve of its liabilities when it was really using the canteen management as its instrumentality and agent. The clock apart the 'voice definitely is that of jacobs'. Consequently, we could neither find any error of law or other vitiating circumstances in the judgement of the Division Bench nor any infirmities in the process of reasoning or gross unreasonableness and absurdities in the conclusions arrived at to restore the Award so as to justify and warrant our interference in the matter.

22. The claim of the appellants to consider the question of awarding compensation than to allow them to be reinstated,does not also appeal to us. The canteen services have to be necessarily provided throughout for the staff and the Bank can always utilise the services of the workers for the purpose and there is no justification to deny them of the bard earned benefits of their service."

12. It is significant to note that while deciding the case of Indian Overseas Bank and their workman, the Hon'ble High Court of Madras dealt with certain other cases including the case of M.R.R. Khan v. Union of India, 1990 Supp. SCC 191 in which it was observed by their Lordships that the canteens could be classified into three categories :—

(1) Statutory canteens which are required to be provided compulsorily in view of Section 46 of the Factories Act, 1948;

(2) Non statutory recognised canteens—such canteens are established with the prior approval and recognition of the Railway Board as per the procedure detailed in the Railway Establishment Manual and

(3) Non-statutory non-recognised canteens—these are canteens established without the prior approval or recognition of the Railway Board.

It was held by their Lordships that so far as the employees of the third category of canteens are concerned, they were not entitled to claim the status of railway servant. It was further held by their Lordships of the Hon'ble Supreme Court in the case of All India Railway Institute Employees' Association v. Union of India, 1990(2) SCC 342 that "they are established as per of the work welfare measure for the railway staff and the kind of activities they conduct depend, among other things, on the funds available to them, the activities having been tailored to the budgets. If the cost of activities goes beyond the means they have to be curtailed. On these facts this Court held that the staff members employed by the Railway institutes|clubs are not the employees of the Railways." Their Lordships of the Hon'ble Madras High Court also considered some other cases and quoted the observation of their Lordships of the Hon'ble Supreme Court which is as follows :

> "We, therefore, hold that the assumption made by the Tribunal that the instant case clearly falls within the ratio laid down by this Court in MMR Khan case. is totally unjustified and incorrect. On the facts of this case, in the absence of any statutory or other legal obligation and in the absence of any right in the Bank to supervise and control the work or the details thereof in any manner regarding the canteens, it cannot be said that the relationship of master and servant existed between the Bank and the various persons employed in three types of canteens...."

13. In a case of Parimal Chandra Raha & Ors. v. Life Insurance Corpn. of India & Ors., 1995 Supp. (2) SCC 611 their Lordships of the Hon'ble Supreme Court made certain significant observations. This case also related to the claim of the canteen employees regarding their absorption by the Corporation and parity of pay with regular employees of the Corporation. Their Lordships observed that infrastructure for running the canteen viz. the premises, furniture, electricity, water etc. were supplied by the Corpn. The canteen service was admittedly essential for the efficient working of the employees and officers of the Corporation. The functioning hours of the canteens were also fixed by the Corporation. The employees of the Corporation had all along being making complaints about the poor and inadequate service rendered by the canteen to them only to the Corporation and the Corporation had been taking steps to remedy the defect in the canteen service. Further, whenever there was a temporary break-down in the canteen service, on account of agitation or strike of the canteen workers, it was the Corporation which had been taking active interest in getting the dispute resolved and the canteen workers also looked upon the Corporation as their real employer and joined the Corporation as a party to the industrial dispute raised by them. In the circumstances, their Lordships of the Hon'ble Supreme Court held from the statute law and case law that the following principles emerged :—

(1) Canteen maintained under the obligatory provisions of the Factories Act for the use of the employees became a part of the establishment and the workers employed in such canteen are employees of the management.

(2) Even if there is a non-statutory obligation to provide a canteen, the position is the same as in the case of statutory canteens. However, if there is a mere obligation to provide facilities to run a canteen, the canteen does not become part of the establishment.

(3) The obligation to provide canteen may be explicit or implicit. Whether the provision of canteen services has become a part of the service conditions or not, is a question to be determined on the facts and circumstances in each case.

(4) Whether a particular facility or service has become implicitly a part of service conditions of the employees or not, will depend, among others, on the nature of service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc.

Considering the facts of the case their Lordships further observed that in the circumstances of the case, the canteens of the respondent Corporation became a part of the establishment of the Corporation. The canteen committees, the cooperative societies and the contractors engaged from time to time are in reality the agencies of the Corporation and are only a veil between the Corporation and the canteen workers. Therefore, the canteen workers, in fact, are the employees of the Corporation

14. Taking this in mind and considering the facts and circumstances appearing in the present reference. it becomes abandantly clear that the canteens in the present case have also become a part and parcel of the establishment, because under the Sastri Award the management was required to provide canteen facility to the employees and the management also decided to provide canteen to all the branches having 20 or more employees in the branch and also

provided fund for running canteen. The management also provided premises and infrastructure for running the canteen and though the canteens are not run under the management directly, it is being run by the canteen committees constituted by the staff of the Bank. Therefore, it is very difficult to accept that the canteen employees are not the employees of the Bank and its establishment. On this very ground the Tribunal at Madras upheld the claim of the employees against this very employer and the Award of the Tribunal was also upheld by the Hon'ble High Court at Madras and subsequently by their Lordships of the Hon'ble Supreme Court. The facts of both the cases are practically similar and it does not appear to be just and proper that there should be discrimination between the two sets of similar employees in two different region of the country under the same Bank having control over all the region and different office in the country.

15. However, it was contended on behalf of the management that since a different view was taken by their lordships of the Hon'ble Supreme Court in a similar case of State Bank of India (supra), which was an earlier decision of a Division Bench and since the decision of the Indian Overseas Bank v. Canteen Employees (supra) is a later decision, the principle is that the earlier decision should prevail. So far as the principle is concerned, there cannot be any dispute about it. But, at the same time it is to be kept in mind that the principle of natural justice has to be borne in mind while dealing with such matters concerning the welfare of the workmen. Since a decision is available to support the claim of the workmen under the same Bank for a different region, there is no question of arriving at a different conclusion and holding a different view in this matter.

16. Considering the circumstances discussed above, it becomes clear that the claim of the workmen in this case is justified and fit to be allowed. However, so far as the difficulty of the management is concerned, it may be that the management for the present may not have vacancy to accommodate these employees in their regular cadres and therefore it will be difficult to ask the management of the Bank to regularly appoint them in the regular cadre. But, the Bank itself can rectify the mistake by creating a separate cadre of canteen employees in Class-IV with the same scale of pay which is available to the Class-IV employees of the Bank. The Bank will start making payment to the workmen in the scale of pay applicable to the employees of Class-IV in the Bank and shall also make payment to them with effect from the date of reference i.e. 8th April, 1994. These reliefs shall be available to all those canteen employees from amongst the persons enumerated in the reference who are yet to be adjusted in the Bank, because it has been stated that some of them have already been adjusted

17. Accordingly the reference is answered in favour of the workmen.

Dated, Kolkata,

The 1st March, 2001.

B. P. SHARMA, Presiding Officer

नई दिल्ली, 23 मार्च, 2001

का.आ. 785 :— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स आई. बी. पी. कं. लिमि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/लेबर कोर्ट चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-3-2001 को प्राप्त हुआ था ।

[सं.एल.-30012/8/97-आई.आर. (सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2001

S.O. 785.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal L. C. Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M|s. I.B.P. Co. Ltd. and their workmen, which was received by the Central Government on 19-3-2001.

[No. L-30012|8|97-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 5th March, 2001

PRESENT :

K. Karthikeyan.—Presiding Officer.

Industrial Dispute No. : 495|2001

(T.N. I.D. No. 65/98)

BETWEEN

The General Secretary,
I.B.P. Emp. Union,
Chennai. .. Claimant|I Party

AND

The Manager (P & IR)
I.B.P. Co. Ltd,
Chennai. .. Management||II Party

APPEARANCE :

For the Claimant.—Sri Fredrick Castro, Advocate.

For the Management.—M|s. Paul & Paul Anand David, Advocate.

REFERENCE :

Order No. L-30012|8|97-Coal I, dt. 18|27-3-98 Govt. of India, Ministry of Labour, New Delhi.

AWARD

This dispute originally referred to Tamil Nadu Industrial Tribunal for adjudication by the Labour Court, Govt. of India, and was taken on file by that Tribunal as I.D. No. 65|98. Both the parties entered appearance through respective counsel and filed their Claim Statement and Counter Statement respectively. The xerox copy of the documents also filed on behalf of the I Party|Claimant there. When the matter was pending there in that Tribunal, the II Party Management filed their documents and as per orders of the Ministry this case was transferred from the file of Tamil Nadu Industrial Tribunal to the file of this Tribunal.

On receipt of the records of this case, this industral dispute has been taken on file in this Industrial Tribunal as I.D. No. 495|2001 and notices were ordered to be sent to the representative of I Party Union and the counsel appearing for the II Party Management by Registered Post with acknowledgement due informing that the matter has been transferred to this Tribunal, with a direction to appear in this Tribunal with their respective parties to proceed with enquiry.

The Registered notices sent to the counsel on either side were duly served for today's hearing and the postal acknowledgements were received.

2. When the matter was taken up today, the aggrieved workman mentioned in the Schedule of reference one Sri S. Jayagopi representing the I Party| Claimant appeared in Court and filed a memo. The copy of that memo was served on the counsel for the II Party|Management appeared in Court. In the memo filed by the Workman|Petitioner, it is stated that the Petitioner does not want to pursue the industrial dispute and wants to withdraw the same. It is further requested in this memo to dismiss this industrial dispute as withdrawn.

3. On a perusal of the records in this case, it is seen that this aggrieved workman has signed the Claim Statement along with the General Secretary of the Claimant Union. After hearing the counsel for the Respondent present in the Court and also this Petitioner Workman, the memo submitted by the Petitioner workman has been recorded. As the Petitioner himself does not want to pursue the industrial dispute between himself and the Management and requests the Tribunal to dismiss this dispute as withdrawn, an award is passed holding that no dispute exists between the parties at present and the industrial dispute referred to in the Schedule of reference is dismissed as withdrawn. No Cost.

(Dictated to the Stenographer and transcribed and typed by him and corrected and pronounced by me in the open court on this day, the 5th March, 2001.)

K. KARTHIKEYAN, Presiding Officer

नई दिल्ली, 23 मार्च, 2001

का.आ. 786 :— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स इस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कमकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं.-1, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-2001 को प्राप्त हुआ था ।

[सं.एल.-20012/(455)/93-आई.आर. (सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 23rd March, 2001

S.O. 786.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No.-1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. IISCO and their workman, which was received by the Central Government on 20-3-2001.

[No. L-20012|455|93-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)-(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 20 of 1995

PARTIES :

Employers in relation to the management of Chasnalla Colliery of M/s. IISCO Ltd.

AND

Their Workmen

PRESENT :

Shri Sarju Prasad, Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Joshi, Advocate.

For the Workmen : None.

STATE : Jharkhand. INDUSTRY : Coal.
Dated, the 5th March, 2001

AWARD

By Order No. L-20012(455)|93-I.R. (Coal-I) dated the 7th February, 1995 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Chasnalla Colliery of M|S. IISCO Ltd. in showing discrimination to 18 Tyndals from 1-7-91 relating to their promotion is justified? If not, to what relief the workmen is entitled?"

2. In this case several adjournments were given to the concerned workmen, but since 19-1-2000 neither the sponsoring union nor the concerned workmen are appearing before this Tribunal to take any further step. It, therefore, appears that neither the sponsoring union nor the concerned workmen are interested to contest the case.

3. In such circumstances I render a 'No Dispute' Award in this reference case.

SARJU PRASAD, Presiding Officer

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